ESTTA Tracking number:

ESTTA462080 03/15/2012

Filing date:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046185
Party	Plaintiff Amanda Blackhorse, Marcus Briggs, Phillip Gover, Shquanebin Lone-Bentley, Jillian Pappan, and Courtney Tsotigh
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Date	03/15/2012
Attachments	Part 58 of 60 BLA-TTAB-06627 - 06730.pdf (106 pages)(4600646 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,606,810 (REDSK Registered July 17, 1990,	KINETTES)
Registration No. 1,085,092 (REDSKINS) Registered February 7, 1978,	
Registration No. 987,127 (THE REDSKI Registered June 25, 1974,	NS & DESIGN)
Registration No. 986,668 (WASHINGTO Registered June 18, 1974,	ON REDSKINS & DESIGN)
Registration No. 978,824 (WASHINGTO Registered February 12, 1974,	ON REDSKINS)
and Registration No. 836,122 (THE RED Registered September 26, 1967	SKINS—STYLIZED LETTERS)
Amanda Blackhorse, Marcus Briggs, Phillip Gover, Jillian Papan, and Courtney Tsotigh,))))
Petitioners, v.) Cancellation No. 92/046,185
Pro-Football, Inc.,)))
Registrant.)

ATTACHMENT TO PETITIONERS' FIRST NOTICE OF RELIANCE

PART 58 OF 60

BLA-TTAB-06627 – BLA-TTAB-06730

Respectfully Submitted,

/s/Jesse A. Witten

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A STUDY OF CONSUMER ASSOCIATION AND CONFUSION REGARDING RETRACTABLE TAPE MEASURES

Prepared by
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Prepared for
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Washington, D.C.

September, 1988

PLAINTIFF EXHIBIT

160

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BACKGROUND AND STUDY OBJECTIVES

CooperTools, a division of Cooper Industries, manufactures various hand tools under the Lukfin trademark. Among these hand tools is the Lufkin Y125 retractable 25 foot tape measure. CooperTools also manufactures a private label version of the Y125 tape measure sold under the True Value/Master Mechanic brand name. Both the Lufkin Y125 and Master Mechanic models are purchased by the "do-it-yourselfer" market and the market of "professionals," namely, those who use hand tools in the normal course of carrying out their everyday jobs.

The Stanley Works, a firm that also manufactures hand tools (including the Powerlock II, a retractable tape measure) for both of the aforementioned markets, alleges that the exterior design and configuration of the Lufkin Y125 tape measure is confusingly similar to their own product and is therefore likely to confuse the consumer into believing that the Lufkin Y125 and Stanley tape measures come from the same source, namely, Stanley. Stanley further alleges that such confusion is also likely to occur with the Master Mechanic brand of retractable tape measures.

Cooper denies that the public would be confused by any of these tape measures.

Accordingly, the present investigation was conducted to determine the extent to which relevant consumers, upon examining either the Cooper/Lufkin or True Value/Master Mechanic brands of retractable tape measures, would be confused into believing that either of these tape measures was either manufactured by or associated with Stanley.

STUDY AUTHORSHIP AND RESPONSIBILITY

This study was designed by Jacob Jacoby, Ph.D., Merchants Council Professor of Marketing at New York University, and Executive Director of SciRex, Inc.

Via subcontract, it was implemented by Princeton Research and Consulting Center, Inc. under the direction of Leon B. Kaplan, Ph.D., President.

This report of the study and its findings was prepared by Dr. Jacoby.

METHOD

DESIGN PRINCIPLES AND STANDARDS

This study was designed and conducted in accordance with the principles and standards employed in the disciplines of marketing, advertising and consumer research. Adherence to these principles provides the best assurance that the data collected are valid and can be relied upon to draw conclusions regarding the states

- 1. The proper universe be identified and examined.
- 2. A representative sample be drawn from each such universe.
- 3. The plan for selecting the samples should be prepared in accordance with generally accepted standards of procedure in the field.
- 4. The questionnaire for gathering the relevant information be prepared in accordance with generally accepted standards of procedure.
- 5. The interviewers be well trained and have no knowledge of the pending litigation or purposes for which the data would be used.
- 6. The interviewing be conducted in accordance with generally accepted standards of procedure in the field.
- The questioning of respondents be correct and unbiased.
- 8. Once gathered, the data be accurately analyzed and reported.
- 9. The persons designing and conducting the investigation be qualified to perform their tasks.

OVERVIEW OF PROCEDURE AND RESEARCH DESIGN

Potential respondents were approached in front of selected hardware stores at various sites around the country and asked a series of screening questions designed to determine whether they were eligible to participate in this study. Those qualifying were invited to participate. After being given a retractable tape measure to examine, respondents were asked a series of questions designed to elicit their beliefs as to the maker of the tape measure and whether the maker of that retractable tape measure made any other retractable tape measures sold under other names (see Appendix A -- Questionnaires).

TEL 682-3485

At each site, respondents were assigned to one of three test groups or "cells". Those assigned to Cell 1 were given the Lufkin Y125 tape measure to examine; those assigned to Cell 2 were given the Master Mechanic brand; those assigned to Cell 3 were given an Oxwall brand (manufactured by Atlas). other respects, the respondents in all three groups were treated the same way and asked the same questions.

The Oxwall tape measure was deliberately selected to serve as a "control" because it had an extrior configuration identical to a configuration that Stanley had previously acknowledged did not infringe upon its rights. Thus, one would expect that zero percent of the respondents in this group would identify Stanley as being the source of the Oxwall. To the extent that consumers did identify Stanley as the source, their responses could be interpreted as being a function of something other than the exterior design (e.g., they were just guessing; Stanley was the only brand name that they knew; etc.).

Responses of Stanley in the Oxwall control cell could therefore be used to evaluate the significance of any Stanley responses that might surface in the Lufkin and Master Mechanic cells. If respondents in these other two cells replied Stanley at a rate equal to or lower than those doing so in the Oxwall cell, then this would be strong evidence that the exterior design of the two Cooper brands was not being confused with that of Stanley. Attributions of Stanley would therefore not likely be a function of the exterior configuration, the feature that is at issue in this case.

Note that, so as to reflect just how the consumer would typically come across and make purchasing decisions regarding these items in the store environment, all tape measures were handed to the respondents in their original packaging.

UNIVERSE OF INTEREST

Any research, but especially that conducted for purposes of litigation, needs to ensure that it focuses on the "proper respondents," namely those individuals whose state of mind and potential behavior are relevant. The totality of all proper respondents is called the universe of respondents. It is incumbent upon the researcher to specify the universe of interest at the outset.

Upon consideration of the issues involved, two relevant universes were defined.

The first universe consists of individuals who, by virtue of their occupation, might be expected to have a higher than average potential to purchase such a hand tool. This universe was defined as consumers, aged 18 to 65, who use hand tools in their work and either bought or used a retractable tape measure within the last two years.

The second universe consists of the broader set of all consumers aged 18 to 65 who have used a retractable tape measure within the past two years.

Accordingly, as described in the next section of this report, a sampling plan was devised that would enable us to gather information from both types of consumers.

To avoid including in the study individuals who, by virtue of the type of work they they do, might be atypically sensitized to the issues, it is generally considered good practice to exclude people who work either in marketing/advertising research, or the industries represented by the products being studied, in this case, in the tool industry.

SAMPLING PLAN

Though it would appear best if one could take a census (that is, test all members of the proper universe), as a general rule, this is not possible. Accordingly, researchers test only a subset (or "sample") of the universe. Then, utilizing well-established principles generally accepted by researchers, statisticians, and marketers, the researchers extrapolate their findings from the sample to the universe as a whole.

The set of rules that one uses for selecting a sample is termed the <u>sampling plan</u>, and there are two broad categories of such approaches: probability and non-probability plans. A <u>probability</u> sample is one in which every respondent has a known probability of being included in the sample. In a <u>non-probability</u> sample, one does not know the probability of selecting each respondent.

A non-probability sample was used for this investigation. Well-conducted non-probability samples are widely and properly relied upon by both academic and commercial (e.g., marketing and advertising) researchers, and many business decisions of considerable consequence are predicated on results derived from studies that employ such plans. In addressing the objectives of this particular investigation, these procedures were considered appropriate for gathering pertinent data.

The present investigation employed a multistage sampling plan executed in seven cities, each situated in a different U.S. Census region. The four stages of the sampling plan for this study were:

Stage	Sampling Unit
1	Census Region
2	Cities within Census Regions
3	Hardware Stores within cities
4	Respondents at Hardware stores

1. Census Region Selection

This survey was conducted in the seven of the nine Census Regions. The Mountain and East North Central regions were not represented in this study because acceptable interviewing sites could not be found in time.

2. City Selection

The criteria for selecting a specific city were that: (1) an experienced interviewing organization existed within the city, (2) the interviewing service had an adequate number of experienced professional interviewers available during the time available to conduct the study, and (3) a hardware store could be found in that city that was willing to allow interviewers to intercept and screen customers exiting the store.

Using these criteria, the following 7 SMSAs were selected for interviewing:

- · Middle Atlantic Buffalo, NY;
- New England Swamptscott, MA;
- West North Central Independence, MO;
- · South Atlantic Atlanta, GA;
- · Pacific Los Angeles, CA;
- East South Central Louisville, KY;
- · West South Central Houston, TX.

3. Hardware Store Selection

The hardware stores selected represented a mix of various types of such stores. Three were independents, three were chains (one Ace and two True Value) and one was a large discount do-it-yourself store. Cities and stores were selected without any input from Lufkin or its attorneys.

4. Respondent Selection

Potential respondents were intercepted as they exited the hardware store.

The objective was to interview at least 40 respondents at each site of which at least 14 would be professionals, with one third of the respondents at each site being assigned to one of the three cells.

- Middle Atlantic Buffalo, NY;
- · New England Swamptscott, MA;
- West North Central Independence, MO; //
- · South Atlantic Atlanta, GA;
- Pacific Los Angeles, CA;
- · East South Central Louisville, KY;
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4. Respondent Selection

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INTERVIEWING PROCEDURES

Interviewing Control and Supervision. Throughout the assignment, tight control and supervision was maintained over all aspects of the interviewing.

Princeton Research and Consulting Center, Inc. prepared customized, detailed interviewer and supervisor instructions for this assignment. Copies of these instructions are found in Appendix B of this report.

Before beginning work on this study, each interviewer was required to:

- read the interviewer instructions;
- attend a personal briefing conducted by a senior staff member of the interviewing organization. (At this briefing the interviewing procedures were gone over in detail, question by question);
- complete two practice interviews one as a respondent and one as an interviewer.

Double-Blind Interviewing. It is important to point out that the study was administered under "double-blind" conditions. That is, not only were the respondents kept uninformed as to the true purpose and sponsorship of the study, but both the interviewers and field supervisors were similarly "blind" with respect to the purpose and sponsorship. Without such knowledge, there is little likelihood that some interviewer(s) might correctly ascertain what responses would be desirable from the sponsor's perspective, and thereby be in a position either to exert an influence on the respondents in this regard, or to modify their recording of a respondent's answers so as to be "helpful".

Name of Questionnaire. The name of the study placed at the top of the question-naires (Hand Tool Study) was carefully chosen so as to be as non-leading and "neutral" as possible. At no time were either the supervisors or interviewers told that the study might be used for legal purposes.

Implementation Period. Interviewing dates were September 8 to September 9, 1988.

DATA PROCESSING

Field Check-In. When completed interviews were returned to Princeton Research and Consulting Center, Inc., they were reviewed by PRCC's Field Department to ensure that respondent's answers to screening questions indicated that they met all eligibility requirements, and that the interviews themselves were complete.

Respondent Verification. Upon receipt of the completed interviews by Princeton Research and Consulting Center, Inc., a listing of the 286 respondent names was sent to an independent WATS telephone interviewing service (Long River Communications) for "validation".

Long River was given the responsibility of attempting to recontact by telephone each respondent to confirm that:

- Such a person actually existed.
- The person met the universe requirements for the study.
- The person was actually interviewed for this study.

A copy of the validation questionnaire is in Appendix C.

Editing. All editing of the questionnaires was completed on-premises by PRCC's own Coding Department.

Keypunch Verification and Computer Checking. The keypunch operation of transferring the interviewer's and coder's recording of the responses onto computer tape was double checked by performing 100% keypunch verification. That is, each and every respondent's answers were punched twice by two different keypunchers and then compared, so that any discrepancy could be identified, double-checked, and resolved. This level of verification is well above the industry standard of approximately 10% to 20% and virtually eliminates any possible keypunch error.

Furthermore, each questionnaire was computer checked against a written document which indicated who was qualified to answer each question and the specific answer categories which were permissible for that question. Any discrepancies were resolved by reviewing the questionnaires themselves. By not forcing any respondent answers into preconceived patterns of responses, the integrity of the original source data was maintained.

The computer tabulations themselves were thoroughly checked by PRCC for accuracy, both by reviewing the computer tabulation specifications, and by checking each and every table against unannotated and unmanipulated respondent counts (i.e., "marginals").

SUMMARY OF MAJOR FINDINGS

As noted earlier, three separate groups were involved, each addressing a different objective. The groups and their respective purposes may be described as follows:

- Group 1 -- This group was used to determine the extent to which consumers, when examining the Lufkin brand retractable tape measure that is at issue, would:
 - (1) correctly identify the source as either Lufkin or its parent company, CooperTools or Cooper Industries, or
 - (2) incorrectly identify the source as Stanley.
- Group 2 -- This group was used to determine the extent to which consumers, when examining the True Value Hardware Store house brand of retractable tape measure manufactured by Lufkin/Cooper and sold under the Master Mechanic brand name, would:
 - (1) correctly identify the source as either True Value/Master Mechanic or Lufkin/Cooper, or
 - (2) incorrectly identify the source as Stanley.
- Group 3 -- This group served as a "control group." Specifically, it was used to determine the extent to which consumers, when examining a retractable tape measure sold under the Oxwall brand name and having a completely different shape, that Stanley acknowledges does not infringe upon its mark would:
 - (1) correctly identify the source as either Oxwall or its parent company, Atlas, or
 - (2) would incorrectly identify the source as Stanley.

The principal findings are discussed in this section. A more detailed presentation of the data is available in the tabular output provided as an appendix to this report.

Respondents in all three groups were first asked Question 1a: "Do you think you know what company or companies makes or puts out this tape measure?"

Those responding affirmatively were then asked Question 1b: "What company or companies is that?" The answers to these questions are provided in Table 1, which summarizes the key findings across the principal substantive questions.

As can be seen from Table 1, approximately 73% of the Group 1 respondents (i.e., those given a Lufkin brand tape measure) correctly replied either Lufkin or Cooper. Only one respondent in this group (1%) identified Stanley as the source.

Similarly, approximately 45% of the respondents in Group 2 (i.e., those given a True Value/Master Mechanic brand tape measure produced by Lufkin) correctly replied either True Value, Master Mechanic or Lufkin. Five respondents in this group (i.e., 6%) misidentified the source as Stanley. The meaning of these findings is best understood when they are considered in the context of the findings obtained with the third (i.e., "control") group.

Approximately 33% of those respondents in Group 3 (i.e., those given an Oxwall brand tape measure manufactured by Atlas) correctly replied either Oxwall, Atlas or Powermaster, this latter name being a word that also appeared on the package for this product. (Separately, the figures are 21% for Oxwall, 9% for Atlas and 5% for Powermaster.) Two percent incorrectly replied Lufkin. Another 4% incorrectly replied Stanley.

Across all three groups, hardly any respondents misidentified the source of any of the measures as Stanley. Of particular importance is the fact that there was virtually no difference in the rate of misidentification across the three groups.

Table 1

Summary of Key Findings

	•			
		Lufkin	Master Mechanic	Oxwall (Control)
No.	of Respondents .	(96)	(94)	(94)
		%	%	%
Q.la	YES	75	61	45
	NO	15	29	39
	DON'T KNOW	10	11	16
Q.1b	Cooper/Lufkin	73	11	1
	True Value/Master Mechanic	0	45	.0
	Powermaster/Oxwall/Atlas	0	0	33
	Stanley	1	6	4
Q.2a	YES	5	20	11
	NO	10	19	22
	DON'T KNOW	84	61	67
Q.2b	Cooper/Lufkin	. 1	2	1
	True Value/Master Mechanic	0	5	0
	Powermaster/Oxwall/Atlas	0	0	0
	Stanley	1	6	3

While a person might not know who or what company manufactured the particular retractable tape measure he was given to examine, it was still possible for that person to believe that the manufacturer of that particular tape measure was the same as the manufacturer of some other brand(s) that he knew of. Accordingly, respondents in all three groups were also asked Question 2a: "Does the company that makes this tape measure also make other retractable tape measures, like this one, sold under other names?" Respondents replying affirmatively to this question were then asked Question 2b: "If you know, what other names are these tape measures sold under?" These results are also summarized in Table 1.

Only one person in Group 1 (i.e., less than 1%) believed that the company that made the Lufkin brand retractable tape measure that they examined also made the Stanley brand of retractable tape measure.

Similarly, only 6% of those in Group 2 believed that the company that made the True Value/Master Mechanic brand of retractable tape measure that they examined also made the Stanley brand of retractable tape measure. Again, to place these data in proper context, only 3% of those in Group 3 believed that the company that made the AL. Oxwall/Powermaster brand of retractable tape measure that they examined also made the Stanley brand of retractable tape measure.

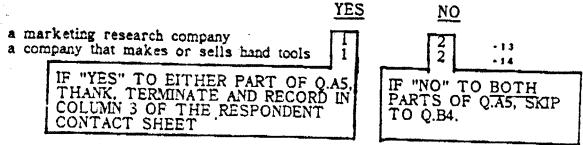
The data supplied above strongly suggest that there is little likelihood that consumers, upon examining either a Cooper/Lufkin or True Value/ Master Mechanic retractable tape measure, would be confused into believing that either of these tape measures was either manufactured by or associated with Stanley.

SciRex	HAND TOOL STUD	<u>Y</u> 8853
	SCREENER	ID#:
SIGHT SCREEN FOR ME	N 18-65 YEARS. INTERCE	PT AS THEY EXIT STORE.
A1. Pardon me, are you in 1 YES 2 NO>SKIP TO 3 DON'T KNOW		and tools in your work?
A2. I am with the P ing a survey on hand to and I'd like to ask you Within the past two years.	a few short questions	ting Center. We are conduct- inds of professional users,
	YES	<u>NO</u>
a saw of any kind a folding ruler a retractable tape me	1 1 asure 1	2 -5 2 -6
A3. Within the past two year	rs have you <u>used</u>	
	YES	NO
a saw of any kind a folding ruler a retractable tape me	1 1 1sure 1	2 · · · · · · · · · · · · · · · · · · ·
IF "NO" TO RETRACTAB RECORD IN COLUMN 2 OF	LE TAPE MEASURE IN C RESPONDENT CONTACT	SHEET. THANK AND
A4. What type of work do	you do for a living?	
11 BUILDER 2 CABINETRY 3 CARPENTER 4 DRY WALLER 5 ELECTRICIAN 6 ENGINEER 7 MAINTENANCE 8 MASONRY 9 MECHANICAL	12 1 PAINTER 2 PLUMBER 3 REMODELLER 4 SHEET METAL WO 5 SURVEYING 6 WALLPAPER 7 OTHER SPECIFY(_ 8 REFUSED	ORKER)

and the state of the state of the same

A5.	Does	anyone	who	lives	in	your	household	work	for
-----	------	--------	-----	-------	----	------	-----------	------	-----

0000 KANE DALSIMER



- B1. Have you, yourself, used any hand tools, such as hammers, screwdrivers and pliers, around your home in the last two years?
- 1 YES--->CHECK QUOTA 2 NO--->THANK, TERMINATE AND RECORD IN COLUMN 2
- B2. I am ____ with the Princeton Research & Consulting Center. We are conducting a survey on hand tool usage and I'd like to ask you a few short questions.

 Within the past two years, have you used ...

	YES	NO	
a saw of any kind a folding ruler a retractable tape measure	1 1 1	2 2 2>THANK, TERMINATE AND RECORD IN COLUMN 2	- 1 6 - 1 7 - 1 8

B3. Does anyone who lives in your household work for...

	YES NO	
a marketing research company a company that makes or sells hand	tools 1 2	- 19
IF "YES" TO EITHER PART OF Q.B3. COLUMN 3.		7 20

B4. Are you...

- 1 under 18--->THANK, TERVINATE AND RECORD IN COLUMN 4
 - 2 18 to 29, 3 30 to 49, or
 - 4 50 to 65 years of age,
 - 5 66 or older?--->THANK, TERMINATE AND RECORD IN COLUMN 4
 - 6 REFUSED---->THANK, TERMINATE AND RECORD IN COLUMN 4

SciRe_X, Inc. (S9135) c. 1991 9145 062091

ROTATION: 1

- 30

-31

CELL:

1

2

IN-STORE STUDY MAIN QUESTIONNAIRE

I'd like you to look at these three products as you would if you saw them in the supermarket and were thinking of buying them. Please take as much time to look at them as you would if this were a real purchasing situation. Just tell me when you're done, and then I'll have a few questions to ask you:

WHEN RESPONDENT INDICATES THAT HE/SHE IS DONE, SAY:

I'd like you to keep these particular products in mind as I put them away.

AS YOU PUT EACH PRODUCT AWAY, PICK IT UP AND TURN SO THAT FRONT PANEL FACES RESPONDENT.

PAUSE NO MORE THAN TWO SECONDS FOR EACH PRODUCT, THEN REMOVE PRODUCT FROM VIEW.

AFTER ALL THREE PRODUCTS ARE PUT AWAY, SAY:

1. Now I'd like you to help me out with something else. It will take only a few minutes of your time, and I'll give you \$10.00 when you're done. It's easy.

TAKE OUT \$7.00, SHOW TO RESPONDENT AND SAY:

While you are in the supermarket doing your shopping, I'd like you to use this \$7.00 to buy the specific products that I just showed you. When you come back, I'll take the products and the change, and then give you \$10.00 for helping me out.

I think they still have enough; but if they happen to be out of the particular brand I showed you, please don't substitute another. Just come back with the change. I'll be waiting for you here.

REFUSAL TO PARTICIPATE: 1 2 3 4 5 6 7 8 9 -32

PLAINTIFF EXHIBIT

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WHEN RESPONDENT RETURNS, SAY:

Thanks for helping me out. Could I please have the three products that I asked you to buy and the change from my \$7.00?

2. WRITE DOWN THE SPECIFIC BRAND NAMES OF THE PRODUCTS.

	NAME(S)	<u>NC</u>	NE		
PRODUCT 1 (TOMATO PASTE):	1.	2.		x	34-35
PRODUCT 2 (MUSTARD):	1	2.		x	36-37
PRODUCT 3 (microwavable entree):	1	2		х	
IF RESPONDENT RETURNS WITH ENTREE, ASK: X. I see you did not be entree. Could you please (PROBE: Anything else?)	ring back a micr	cowavable			
			+	٥	
			4	2	

I have just a few more questions to ask you.

TAKE CONTAINER WITH YELLOW DOT FROM BAG, PLACE NEXT TO CONTAINER WITH RED DOT, AND SAY:

	За.	Th ca	nese are two different brands of food that can be microwaved. Do you think they ame from the same company or from different companies, or don't you know?	٠
-43		2	SAME COMPANY> SKIP TO Q.5 DIFFERENT COMPANIES> SKIP TO Q.3c NO OPINION> SKIP TO Q.3b DON'T KNOW> SKIP TO Q.3b	
		3b	Actually, these products come from two different companies.	
		30	. Would you say that the companies that put out these products	
	-44	L	 are probably connected or associated in some way, are probably NOT connected or associated in any way, or -> SKIP TO Q.4 you don't have an opinion on that? -> SKIP TO Q.4 DON'T KNOW -> SKIP TO Q.4 	
		3d	What makes you say that? RECORD VERBATIM:	
				15
				1(
•	4.		ould you say that in order to put out its version of microwavable entree, the com- ny that came second	
47			probably did have to get a license or ask permission from the company that came first,	
			probably did NOT have to get a license or ask permission from the company that came first, or	
		3	you don't have an opinion on that?	
		4	DON'T KNOW	

TAKE CONTAINER WITH YELLOW DOT FROM BAG, PLACE NEXT TO CONTAINER WITH RED DOT, AND SAY:

	3			se are two different brands of food that can be microwaved. Do you think they be from the same company or from different companies, or don't you know?
-43		2	2 D 3 N	AME COMPANY> SKIP TO Q.5 FFERENT COMPANIES> SKIP TO Q.3c D OPINION> SKIP TO Q.3b DN'T KNOW> SKIP TO Q.3b
		3	3b.	Actually, these products come from two different companies.
		3	3C.	Would you say that the companies that put out these products
	-4	14		are probably NOT connected or associated in any way, or> SKIP TO Q.4 are probably connected or associated in some way, or you don't have an opinion on that?> SKIP TO Q.4 DON'T KNOW> SKIP TO Q.4
		3	d.	What makes you say that? RECORD VERBATIM:
	4.	V p	/oul	-45
47		2	pro	bably did NOT have to get a license or ask permission from the company that ne first, or
		1	pro firs	bably did have to get a license or ask permission from the company that came
		3	you	don't have an opinion on that?
		4	DO	N'T KNOW

HAND RESPONDENT \$10.00, SAYING:

5. Thank you very much. Would you please sign this receipt and Certification Page so that I can prove to my supervisor that I interviewed you?

RESPONDENT CERTIFICATION	
I certify that I was shown three products, and received an incent	cts, asked to shop for ive for my time.
RESPONDENT SIGNATURE	DATE

INTERVIEWER CERTIFIC	ATION
I certify that I carried out this with my interviewer instructions.	interview in accordance
INTERVIEWER SIGNATURE	DATE

	RESPONDENT INF	ORMATION BOX	•	
	•			
(PRINT)				
RESPONDENT'S	FULL NAME:			
ADDRESS:				
CITY, STATE:			ZIP:	
TELEPHONE #:	()	· · · · · · · · · · · · · · · · · · ·		
INTERVIEWER'	S FULL NAME: _			
TIME INTERVI	EW BEGAN:	_ A.M./P.M.	ENDED:	A.M./P.M.

INTERVIEWER INSTRUCTIONS

IN-STORE STUDY

Purpose

To analyze consumer opinions regarding various products.

Materials

Materials needed for this study:

- Screeners (white);
- Questionnaires (colored);
- Practice Questionnaires and Screeners (labeled);
- Three (3) products with a red dot, one (1) product with a yellow dot;
- Validation Sheets;
- Quota Control Sheets;
- One check (sent on 6/20/91 to cover both purchasing and incentive fee);
- Interviewer Instructions, and

Procedure

Potential respondents are to be intercepted in front of the supermarket and screened to qualify. Qualified respondents will be asked to go into the supermarket and purchase three products and to return when finished shopping with their purchase. They will be asked questions regarding their purchases and then given \$10.00 for their cooperation.

Interviewer instructions and answer categories that are <u>not</u> to be read are written in all CAPS. Text to be read is in upper and lower case.

Follow all directions exactly as written. Read all questions exactly as written. Do not paraphrase or interpret. If respondent requires clarification, reread question slowly, emphasizing each word. Do not probe unless instructed to do so. Record answers verbatim, exactly as spoken by respondent. If necessary, ask respondent for spelling. Do not erase. Draw a line through the answer and enter new answer.

Please write all answers legibly. If we cannot read it, we can not use it.

Interviewer and respondent <u>both</u> must sign the appropriate Certification boxes on the last page of the Main Questionnaire. If respondent refuses to sign, initialing the box is acceptable.

If respondent refuses to give his/her name and phone number for the Respondent Information Box, the other interviewer who is with you <u>must</u> initial the front of the questionnaire and indicate that the interview was on-site validated.

These two procedures <u>MUST</u> be followed exactly or we cannot accept the interview. If interview is terminated, circle the next number beneath each question and reuse screener.

Screening

Position yourself at your designated screening location outside the supermarket. Approach the first person who appears to be age 16 or older who passes your screening location. Attempt to screen that person. If successful, interview that individual, wait for the respondent to return with their purchase before attempting to screen another individual. After completion of the interview, return to your screening location and approach the next person who appears to be age 16 or older who passes your screening location. If unsuccessful, return to your screening location and approach the next person who appears to be age 16 or older who passes your screening location. Please be sure to check your quotas before returning to your screening location.

Screener Questionnaire

- Q.A Circle response. If "NO", thank, terminate, record below, erase and reuse screener. CHECK QUOTAS.
- Q.B Circle response. If "under 16 , refused, or over quota", thank, terminate, record below, erase and reuse screener.
- Q.C Circle response. If "NO OR DON'T KNOW", thank, terminate, record below, erase and reuse screener.
- Q.D Circle response. If "NO OR REFUSED", thank, terminate, record below, erase and reuse screener.
- Q.E Respondent must answer "YES" to "prepared foods that are already made and just need to be heated up before you eat them" and at least one other item in Q.E. If not, thank, terminate, record below, erase and reuse screener.
- Q.F Circle response. If "YES" to any "boxed" occupation, thank, terminate, record below, erase and reuse screener.
- Q.G Circle response. If "YES" or "DON'T KNOW", thank, terminate, record below, erase and reuse screener.
- Q.H If respondent refuses, thank, terminate, record below, erase and reuse screener.

Be sure to RECORD QUOTA GROUP in QUOTA BOX on front of screener.

Main Ouestionnaire

Show the respondent the three products with the red dots (mustard, tomato paste, one of the microwaveable meals - CHECK THE COLOR OF THE DOT). Respondent may pick up the products and examine them as long as desired. Do not rush respondent. When respondent is through examining the products, remove the products from view.

Q.1 Ask the respondent if, while doing their shopping, would they please purchase the three products that they were just shown. Give them \$7.00 to make the purchase, reminding them that when they return, you need to keep the products and receive change from your \$7.00. In return, you will give them \$10.00 for their cooperation.

Wait for the respondent to return from their shopping before attempting to screen another respondent.

If respondent refuses to participate, thank, terminate and circle below under "REFUSED TO PARTICIPATE".

Q.2 If the respondent returns without making any purchases, mark "NONE" next to each item and ask Q.X.

If the respondent returns without any microwavable meal, mark "NONE" next to PRODUCT 3 and ask Q.X.

Q.X Record verbatim.

Take container with yellow dot (the other microwaveable meal) from bag, place next to the microwavable meal container with red dot, and ask Q.3a.

- Q.3a Circle response. If "SAME COMPANY", skip to Q.5. If "DIFFERENT COMPANIES", skip to Q.3c. If "NO OPINION", skip to Q.3b. If "DON'T KNOW", skip to Q.3b.
- Q.3b. Read sentence.
- Q.3c. Circle response. Read in the order written. The order is rotated depending on which rotation of the questionnaire you are reading. If "are probably connected or associated in some way", ask Q.3d. All others, skip to O.4.
- Q. 3d. Record verbatim.
- Q.4. Circle response.
- Q.5 Have respondent sign Respondent Certification. If respondent refuses to sign, initialing is acceptable. Sign Interviewer Certification. If respondent refuses to give his/her name, address or phone number for the RESPONDENT INFORMATION BOX, supervisor MUST initial front of interview and indicate on-site validation.

Hand respondent \$10.00 incentive money.

Staple Screener to the front of the Main Questionnaire.
Thank you for your cooperation.

СН	E	E	S	Ε		2	T	U	D	<u>Y</u>	
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INTRODUCTION: Hello, I'm calling for Guideline Research Corporation, a marketing research and public opinion polling company. We're conducting a survey and you household has been randomly chosen to represent this area. This is not a salicall. All information will be completely confidential and no one's name will identified with any of the answers.	es
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May I please speak with the adult in your household who is <u>most</u> responsible f food shopping?	or the
IF SHOPPING RESPONSIBILITY IS SHARED EQUALLY BY TWO OR MORE PEOPLE, ASK TO SPEAK TO OLDEST/ STREET OF THESE SHOPPERS.	•
WHEN SPEAKING WITH THAT PERSON, REPEAT INTRODUCTION AND ASK Q. A1 (AS NECESSAU IF PERSON MOST RESPONSIBLE IS NOT AVAILABLE, FIND OUT HIS/HER NAME. MAKE CALLBACK APPOINTMENT AND RECORD BELOW.	RY)
FIRST NAME OF PERSON TO BE CALLED:	
DAY: DAY: TIME: P.M.	
2. DAY: DATE: TIME: P.M.	1
3. DAY: DATE: TIME: P.M.	

PLAINTIFF EXHIBIT

в.	In a typical week, about how many hours of television would you say you watch? (DO NOT READ LIST) (PROBE FOR A SPECIFIC NUMBER OF HOURS.)
	Less than I hour
	1 or more hours 2 (CONTINUE)
	Don't know
	TERMINATE Q. B: LESS THAN ONE HOUR 1 2 3 4 5 6 7 8 9 (10)
с.	Are you, or is any member of your immediate household employed by (READ LIST. RECORD "YES" OR "NO" FOR EACH.)
	An advertising agency
	IF ANY BOXED ANSWER IS CIRCLED, TERMINATE, ERASE AND RECORD BELOW.
	TERMINATE Q. C: RELATED OCCUPATION 1 2 3 4 5 6 7 8 9 (11)
D.	Over the past three months, have you been interviewed either at home or in a shopping mall and asked questions about food products? (DO NOT READ LIST. CIRCLE ONE ANSWER BELOW)
	Yes
	TERMINATE Q. D: PAST 3 MONTH INTERVIEW 1 2 3 4 5 6 7 8 9 (12)

E. Today I'd like to talk to you about various types of cheeses.

As you know, cheese products that are sold in food stores are packaged in a number of different ways. Some cheese, like cottage cheese, is usually sold in a tub or a container from which you spoon out as much as you want. Other cheeses come as solid pieces or chunks; and it's up to you to cut off as much as you want at any one time. Then there are some cheese products that come individually wrapped in cellophane as ready-to-use single slices.

I'd like to know about the types of cheeses you buy. Which, if any, of the following types of cheeses have you bought in the past 3 months, either for yourself or for other members of your household? Did you buy any ... (READ LIST YOURSELF OR TO THE AND CONTINUE UNTIL ALL HAVE BEEN ASKED. RECORD "YES", "NO" OR "DON'T KNOW" FOR EACH.)

(ASK Q. F FOR EACH PRODUCT BOUGHT IN Q. E)

F. Now, what about eating cheeses: Over the past 3 months, did you eat any (REPEAT PRODUCT FROM Q. E)? (RECORD "YES", "NO" OR "DON'T KNOW".)

	PRODUCT FROM 4. C7. Gazan
	Q. E Q. F BOUGHT PERSONALLY EATEN Don't YES NO Know YES NO Know :
START HERE:	(13)
[]	Cheeses packaged in tubs or contained
\bowtie	Solid pieces or chunks of cheese
[]	Cheese products that come individually wrapped in cellophane as ready-to-use single slices 3.6 0 360
	IF "NO" TO "CHEESE PRODUCTS THAT COME INDIVIDUALLY WRAPPED IN CELLOPHANE AS
	READY-TO-USE SCICES IN G. E.
	SCREENER. (15)
	TERMINATE Q. E: NO INDIVIDUALLY WRAPPED 1 2 3 4 5 5 7 5 5 1 SINGLE SLICES BOUGHT

G.	The few questions that I have deal with prepackaged sliced cheese products sold in packages of 8, 12, 16 slices and so on, where each slice comes individually wrapper
	in its own sheet of cellophane.

- Which brand or brands of ready-to-use single slice cheese products have you bought. within the past year? (DO NOT READ CHOICES.) (RECORD BELOW UNDER COL. Q. Gl.)
- G2. (FOR EACH * BRAND NOT MENTIONED IN Q. G1, ASK:)
 Within the past year have you bought (* BRAND)? (CIRCLE APPROPRIATE RESPONSE UNDER COL. Q. G2.)

(LOOKING AT Q'S G1 AND G2 TAKEN TOGETHER, IF MORE THAN ONE BRAND MENTIONED,

Of the brands of single slice cheese products that you've bought within the past year, which <u>one</u> would you say you've bought most often? (DO <u>NOT</u> READ CHOICES) G3.

year, which one would you say you	. •						
*Borden's Singles	O. Gl Bought Unaided (16)	Q. G: Bough Aide: (17)	<u>d</u>	Mos	. G3 t Oft 18) 1	<u>en</u>	
*Borden's Singles			•				
*Fisher's Sandwich Mate	2	2	• • • • •	• • • • •	2		
*Kraft Singles	3	[3]	• • • • •		3		
Other (SPECIFY:)	•	. •					
	0				. 0		
	0					19-	-
	0			• • • • •	. 0	20-	-
	0		••••		. 0	21	-
Don't know	Y			• • • •	. Y		•
IF KRAFT IS NOT MENTIONED EITHER BELOW.	IN G.2 GT OE	l G2, TEF	RMINAT	E. E	RASE	AND R	ECORD
TERMINATE: NO KRAFT	,	1 2	3 4	5 6	7 8	3 9	(22)
QUALIFIED REFUSAL		1 2	3 4	5 6	7 8	B 9	(23)

CHEESE STUDY - Main Questionnaire -

VERBATIM)	cheese for a number of different reasons. What are the teasons? (RECORD ANSWER ? (RECORD ANSWER)? (RECORD ANSWER)	24-
		25- 26-
		27-
		. 28- 29-
		_ 30-
		31-
111-11-170	the reasons for your buying individually wrapped cheese food slices	? ···
(RECORD A	NSWER VERBATIM)	32-
	NZMEK AEKBYLINA	33_
		34- - 35-
		30- 37.
		38-
		39-
tell me	like you to think only about <u>Kraft</u> Singles cheese food slices. Pl all the reasons that you can think of as to why you buy Kraft Single all the reasons that you can think of as to why you buy Kraft Single all the reasons that you can think of as to why you buy Kraft Single all the reasons that you can think of as to why you buy Kraft Singles (RECORD ANSWER VERBATIM)	
tell me individu reasons?	ally wrapped cheese food slices? (RECORD ANSWER VERBAILM) AND SERVICE (RECORD ANSWER VERBAILM)	40 41
tell me individu reasons?	ally wrapped cheese food slices? (RECORD ANSWER VERBAILM) AND CRECORD ANSWER VERBAILM)	40 41 42 43 45 45
Kow I'm	all the reasons allices? (RECORD ANSWER VERBAITM) And only state (RECORD ANSWER VERBAITM) (RECORD ANSWER VERBATIM) going to mention a number of things that Kraft Singles may or may a going to mention a number of things that Kraft Singles do not be seath item that I mention, please tell me if Kraft Singles do not be seath item.	40 41 42 43 45 46 7 7
Now I'm contain do not	all the reasons allices? (RECORD ANSWER VERBAITM) And only of the RECORD ANSWER VERBATIM) I going to mention a number of things that Kraft Singles may or may a going to mention a number of things that Kraft Singles do not be seen item that I mention, please tell me if Kraft Singles do contain, or you don't know if they contain this item.	40 41 42 43 44 45 10
Now I'm contain do not	all the reasons allices? (RECORD ANSWER VERBAITM) And only of the RECORD ANSWER VERBATIM) I going to mention a number of things that Kraft Singles may or may a going to mention a number of things that Kraft Singles do not be seen item that I mention, please tell me if Kraft Singles do contain, or you don't know if they contain this item.	40 41 42 43 44 45
Now I'm contain do not	ally wrapped cheese food slices? (RECORD ANSWER VERBAILM) And only of the RECORD ANSWER VERBATIM) I going to mention a number of things that Kraft Singles may or may a. For each item that I mention, please tell me if Kraft Singles do contain, or you don't know if they contain this item. Start with (READ X'D ITEM). Do Kraft Singles contain: (READ X "YES", "NO" OR "DON'T KNOW". CONTINUE UNTIL ALL ITEMS HAVE BEEN AS	40 41 42 43 44 45 10
Now I'm contain do not Let's RECORD ABOUT.	all the reasons are represented by the representation and the representation are represented by the representation are repres	40 41 42 43 44 45
Now I'm contain do not Let's RECORD ABOUT.	ally wrapped cheese food slices? (RECORD ANSWER VERBAITM) (RECORD ANSWER VERBATIM) going to mention a number of things that Kraft Singles may or may n. For each item that I mention, please tell me if Kraft Singles do contain, or you don't know if they contain this item. start with (READ X'D ITEM). Do Kraft Singles contain: (READ X' "YES", "NO" OR "DON'T KNOW". CONTINUE UNTIL ALL ITEMS HAVE BEEN AS Q. 2 CONTAINS Yes No Don't Know	40 41 42 43 44 45
Now I'm contain do not Let's RECORD ABOUT.	all the reading allices? (RECORD ANSWER VERBATTM) And one all ywrapped cheese food slices? (RECORD ANSWER VERBATTM) going to mention a number of things that Kraft Singles may or may a. For each item that I mention, please tell me if Kraft Singles do contain, or you don't know if they contain this item. start with (READ X'D ITEM). Do Kraft Singles contain: (READ X "YES", "NO" OR "DON'T KNOW". CONTINUE UNTIL ALL ITEMS HAVE BEEN AS YES NO Don't Know Protein 1 . 2 3 (49)	40 41 42 43 44 45
Kow I'm contain do not Let's RECORD ABOUT.	all the reason allows (RECORD ANSWER VERBATIM) (RECORD ANSWER VERBATIM) a going to mention a number of things that Kraft Singles may or may a going to mention a number of things that Kraft Singles may or may a for each item that I mention, please tell me if Kraft Singles do contain, or you don't know if they contain this item. (READ X'D ITEM). Do Kraft Singles contain: (READ X "YES", "NO" OR "DON'T KNOW". CONTINUE UNTIL ALL ITEMS HAVE BEEN AS YES", "NO" OR "DON'T KNOW". Q. 2 CONTAINS Yes No Don't Know Protein	40 41 42 43 44 45
Now I'm contain do not Let's RECORD ABOUT.	ally wrapped cheese food slices? (RECORD ANSWER VERBATIM) If going to mention a number of things that Kraft Singles may or may all. For each item that I mention, please tell me if Kraft Singles do contain, or you don't know if they contain this item. Start with (READ X'D ITEM). Do Kraft Singles contain: (READ X "YES", "NO" OR "DON'T KNOW". CONTINUE UNTIL ALL ITEMS HAVE BEEN AS NO Don't Know Protein 1 . 2 3 (49) Vitamin C 1 . 2 3 (50) Milk 1 . 2 3 (51)	40 41 42 43 44 45
Now I'm contain do not Let's RECORD ABOUT.	ally wrapped cheese food slices? (RECORD ANSWER VERBATIM) I going to mention a number of things that Kraft Singles may or may in. For each item that I mention, please tell me if Kraft Singles do contain, or you don't know if they contain this item. Start with (READ X'D ITEM). Do Kraft Singles contain: (READ X'YES", "NO" OR "DON'T KNOW". CONTINUE UNTIL ALL ITEMS HAVE BEEN AS Yes No Don't Know Protein 1 . 2 3 (49) Vitamin C 1 . 2 3 (51) Riboflavin 1 . 2 3 (52) Vitamin A 1 . 2 3 (53)	40 41 42 43 44 45
How I'm contain do not Let's RECORD ABOUT.	ally wrapped cheese food slices? (RECORD ANSWER VERBATIM) (RECORD ANSWER VERBATIM) going to mention a number of things that Kraft Singles may or may n. For each item that I mention, please tell me if Kraft Singles do contain, or you don't know if they contain this item. start with (READ X'D ITEM). Do Kraft Singles contain: (READ X "YES", "NO" OR "DON'T KNOW". CONTINUE UNTIL ALL ITEMS HAVE BEEN AS Q. 2 CONTAINS Yes No Don't Know Protein 1 . 2 3 (49) Vitamin C 1 . 2 3 (50) Milk 1 . 2 3 (51) Riboflavin 1 . 2 3 (52)	40 41 42 43 44 45

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 I'm going to read a short list of characteristics about cheese. As I read each one, please tell me how important that characteristic is to you in your decision to buy Kraft Singles.

Let's start with (X'ED CHARACTERISTIC). Would you say (X'ED CHARACTERISTIC) is extremely important, very important, somewhat important or not at all important?

(CONTINUE UNTIL ALL CHARACTERISTICS HAVE BEEN ASKED ABOUT -- RECORD BELOW UNDER Q. 3. REPEAT SCALE AS NECESSARY.)

	Q. 3 (DO NOT READ)
TART	Extremely Very Somewhat Not At All Don't Important Important Important Know
	Has real cheese flavor 4 3 2 1 Y (56)
[×]	Has consistent quality 4 3 2 1 Y (57)
[]	Is good tasting 4 3 2 1 Y (58)
[]	Is made by a company you can trust 4 3 2 1 Y (59)
[]	Is reasonably priced 4 3 2
[]	Is a source of calcium 4 3 2 1 Y (61).
[]	Is convenient to use 4 3 2 1 Y (62)
[]	Is individually wrapped so it stays fresh 4 3 2 1 Y (63)
[]	Is a source of Vitamin C 4 3 2 1 Y (64)
	IF RESPONDENT SAYS "NOT AT ALL IMPORTANT" TO "IS A SOURCE OF CALCIUM", SKIP TO Q 6a. OTHERWISE, ASK Q. 4a. :
4a.	Since you said that calcium is important to you in your decision to buy Kraft Single Slices, I'd like to ask you a few questions about it. Do you have any idea as to how much calcium is contained in one slice of Kraft Singles? (DO NOT READ CHOICES.)
	Yes
4b.	How much calcium is there in one slice of Kraft Singles? (RECORD VERBATIM. BE SURE TO INDICATE OUNCES, GRAMS, PERCENT RDA OR WHATEVER RESPONDENT SAYS. IF RESPONDENT INDICATES THAT HE/SHE DOES NOT KNOW, CIRCLE "Y" NEXT TO "DON'T KNOW" BELOW.)
	66- 67- ·
	00N'T KNOW

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	CLOULY	DALICTNO	AFTER	FACH	SENTENCE
KEAU	Promet.	LYGDING	ru I Lik	LACII	

milk.	of Kraft Singles actually contains 70% of the calcium in 5	
Now that I matters to	've told you this, I'd like to know whether this difference you. More specifically, would you	
(READ BOTH	CHOICES BEFORE RESPONDENT ANSWERS)	
	Continue buying Kraft Singles slices even though each slice contains 70% of the (72) calcium in 5 ounces of milk	٠.
	or,	•
	Would you stop buying Kraft Singles slices because each slice doesn't contain the same amount of calcium as 5 ounces of milk 2	• ••
	_Dan't know Y	
DO NOT RE.	Other (SPECIFY:)	
	0	73-
	0	
Would thi you use K	s difference in the amount of calcium be enough to affect traft Singles slices? (DO NOT READ CHOICES) (74) Yes	the way in which
In what w	ay or ways would it affect how-you use Kraft Singles slice VERBATIM.)	s? (RECORD
	•	75- . 76-
		77 - 78 - ~
	•	77 -

ASK	EVERYO	NE
-----	--------	----

6a. By the way, do you have any idea as to how much calcium is contained in five ounces of milk? (DO NOT READ CHOICES)

6b. How much calcium is there in five ounces of milk? (RECORD VERBATIM. BE SURE TO INDICATE OUNCES, GRAMS, PERCENT RDA OR WHATEVER RESPONDENT SAYS. IF RESPONDENT INDICATES THAT HE/SHE DOES NOT KNOW, CIRCLE "Y" NEXT TO "DON'T KNOW" BELOW.)

789(11)
Don't know Y

7a. Do you have any children age 17 or under living in your household?
(12)

Yes \dots 1 \longrightarrow (ASK Q. 7b) No \dots 2 \longrightarrow (SKIP TO Q. 8)

7b. As best you know, within the past 3 months, have any of your children eaten Kraft Singles? (DO NOT READ CHOICES)
(13)

Yes 1
No 2
Don't know . Y

8. As best you can remember, have you seen any ads for Kraft Singles either on TV or in print during the past year or so? (DO NOT READ CHOICES)

(14)
Yes 1
No 2
Don't know . Y

15-16-17-18-19-

20-80R

. THANK RESPONDENT

- . COMPLETE INFORMATION BOX ON NEXT PAGE.
- . END INTERVIEW.
- READ, SIGN AND DATE INTERVIEWER CERTIFICATION.
- . STAPLE SCREENER ON TOP OF MAIN QUESTIONNAIRE.

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Allen i

- 37



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EXPLORING MARKETING RESEARCH

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Oklahoma State University



THE DRYDEN PRESS Harcourt Brace College Publishers

Fort Worth Philadelphia San Diego New York Orlando Austin San Antonio Toronto Montreal London Sydney Tokyo

PLAINTIFF EXHIBIT

163

Publisher Elizabeth Widdicombe

Acquisitions Editor Lyn Hastert

Developmental Editor Millicent Treloar

Project Management Elm Street Publishing Services, Inc.

Compositor Progressive Typographers, Inc.

Text Type 10/12 Times Roman

Cover Image Path to an Enigma (Homage to Escher) by Humberto Calzada, 1993, acrylic on canvas painting. Used with permission on

cover and part openers. Collection Walker Art Center, Minneapolis. Gift of the T. B. Walker Foundation, 1953.

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Address for Editorial Correspondence The Dryden Press, 301 Commerce Street, Suite 3700, Forth Worth, TX 76102

Address for Orders The Dryden Press, 6277 Sea Harbor Drive, Orlando, FL 32887 1-800-782-4479, or 1-800-433-0001 (in Florida)

ISBN: 0-03-098136-0

Library of Congress Catalog Card Number: 93-2281

Printed in the United States of America

3 4 5 6 7 8 9 0 1 2

The Dryden Press Harcourt Brace College Publishers



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EXPLORING RESEARCH ISSUES

Cigarette Smoking—Are Smokers Being Honest with Themselves?

Cigarette smoking in public spaces is an emotionally charged and hotly debated issue. Direct, undisguised questioning may not be the best alternative because cigarette smoking seems to trigger ego defense mechanisms. Marketing researchers directly questioned why 179 smokers who believed cigarettes to be a health hazard continued to smoke. The majority answered, "Pleasure is more important than health," "Moderation is OK," "I like to smoke." Such responses suggest that smokers are not dissatisfied with their habit. However, in another portion of the study, the researchers used the sentence completion method. Respondents were asked to respond with the first thing that came to their mind after hearing the sentence "People who never smoke are _____." The answers were "better off," "happier," "smarter," "wiser," "more informed." To "Teenagers who smoke are _____." smokers responded with "foolish," "crazy," "uninformed," "stupid," "showing off," "immature," "wrong." The sentence completion test indicated that smokers are anxious, uncomfortable, dissonant, and dissatisfied with their habit. The sentence completion test elicited responses that the subjects would not have given otherwise.

acceptable response). The analysis of projective technique results takes into account not only what consumers say, but what they do not say.

Word association tests can also be used to pretest words or ideas for questionnaires. This enables the researcher to know beforehand whether and to what degree the meaning of a word is understood in the context of a survey.

Sentence completion method A projective technique in which respondents are required to complete a number of partial sentences with the first word or phrase that comes to mind.

Third-person technique

A projective technique in

which the respondent is asked

why a third person does what he or she does or what a third

person thinks about a product.

The respondent is expected to

transfer his or her attitudes to

the third person.

Sentence Completion Method The sentence completion method is also based on the principle of free association. Respondents are required to complete a number of partial sentences with the first word or phrase that comes to mind. For example:

People who drink beer are	
A man who drinks a clear beer	is
Imported beer is most liked by	
The woman in the commercial	

Answers to sentence completion questions tend to be more extensive than responses to word association tests. The intent of sentence completion questions is more apparent, however.

Third-Person Technique and Role Playing The Iowa Poll asked, Will you wind up in heaven or hell? Nearly all Iowans believed they would be saved, but one-third described a neighbor as a "sure bet" for hell. 18

Almost literally, providing a mask is the basic idea behind the **third-person technique**. Respondents are asked why a third person (for example, a neighbor) does what he or she does or what he or she thinks about a product. For example, male homeowners might be told:

We are talking to a number of homeowners like yourself about this new type of lawn mower. Some men like it the way it is; others believe that it should be improved. Please think of some of your friends or neighbors, and tell us what it is they might find fault with on this new type of lawn mower.

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Respondents can transfer their attitudes to neighbors, friends, or coworkers. They are free to agree or disagree with an unknown third party.

The best-known and certainly a classic example of a study that used this indirect technique was conducted in 1950, when Nescafe Instant Coffee was new to the market. Two shopping lists, identical except for the brand of coffee, were given to two groups of women:

Pound and a half of hamburger
2 loaves of Wonder bread
Bunch of carrots
1 can of Rumford's Baking Powder
(Nescafe Instant Coffee) (Maxwell House Coffee, drip grind)
2 cans Del Monte peaches
5 pounds potatoes

The instructions were:

Read the shopping list below. Try to project yourself into the situation as far as possible until you can more or less characterize the woman who bought the groceries. Then write a brief description of her personality and character. Whenever possible indicate what factors influenced your judgment.

Forty-eight percent of the housewives given the Nescafe list described the Nescafe user as lazy and a poor planner. Other responses implied that the instant coffee user was not a good wife and spent money carelessly. The Maxwell House user, on the other hand, was thought to be practical, frugal, and a good cook.¹⁹

Role playing is a dynamic reenactment of the third-person technique in a given situation. The role-playing technique requires the subject to act out someone else's behavior in a particular setting. The photo on this page shows a child in a role-playing situation. She projects herself into a mother role using a pretend telephone and describes the new cookie she has just seen advertised. Child Research Service believes this projective play technique can be used to determine a child's true feelings about a product, package, or commercial. "When they [children] do speak, youngsters frequently have their own meaning for many words. A seemingly positive word such as 'good,' for example, can be a child's unflattering description of the teacher's pet in his class. In a role-playing game, the child can show exactly what 'good' means to him." 20

Role-playing technique A projective technique that requires the subject to act out someone else's behavior in a particular setting.

A child placed in a role-playing situation may be better able to express her true feelings. A child may be told to pretend she is a parent talking to a friend about toys, food, or clothing. Thus the child does not feel pressure to directly express her opinions and feelings.



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MARKETING RESEARCH

AN APPLIED ORIENTATION

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PLAINTIFF EXHIBIT

164

Library of Congress Cataloging-in-Publication Data

Malhotra, Naresh K.

Marketing research: an applied orientation / Naresh K. Malhotra.
p. cm.
Includes bibliographical references and index.
ISBN 0-13-555350-4 (case)

1. Marketing research. 2. Marketing research—Methodology.
I. Title.
HF5415.2.M29 1993
658.8'3—dc20 92-13858

Acquisition Editor: Sandra Steiner
Development Editor: Elaine Silverstein
Production Editor: Edith Pullman
Interior and Cover Design: Suzanne Behnke
Photo Research: Teri Stratford
Prepress Buyer: Trudy Pisciotti
Manufacturing Buyer: Patrice Fraccio
Supplements Editor: David Shea
Editorial Assistant: Cathi Profitko
Production Assistant: Renée Pelletier

Cover Art: Paul Schulenburg. Courtesy of the Open Software Foundation.

The advertisement on page 431, "We need your support!" is reprinted as it appeared in the September 12, 1986 edition of *Marketing News* by permission of the American Marketing Association. The Windex advertisement on page 635 copyright © 1991 by the Drakett Company is reprinted by permission of the Drakett Company.

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Printed in the United States of America

10 9 8 7 6 5 4 3 2 1

4-05E555-E1-0 NBZI

Prentice-Hall International (UK) Limited, London Prentice-Hall of Australia Pty. Limited, Sydney Prentice-Hall Canada Inc., Toronto Prentice-Hall Hispanoamericana, S.A., Mexico Prentice-Hall of India Private Limited, New Delhi Prentice-Hall of Japan, Inc., Tokyo Simon & Schuster Asia Pte. Ltd., Singapore Editora Prentice-Hall do Brasil, Ltda., Rio de Janeiro

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expressive techniques Projective techniques in which the respondent is presented with a verbal or visual situation and asked to relate the feelings and attitudes of other people to the situation.

third person technique

A projective technique

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Cartoon Tests In cartoon tests, cartoon characters are shown in a specific situation related to the problem. The respondents are asked to indicate what one cartoon character might say in response to the comments of another character. The responses indicate the respondents' feelings, beliefs, and attitudes toward the situation. Cartoon tests are simpler to administer and analyze than picture response techniques. An example is shown in Figure 6.4.

Expressive Techniques

In expressive techniques, respondents are presented with a verbal or visual situation and asked to relate the feelings and attitudes of other people to the situation. The respondents express not their own feelings or attitudes, but those of others. The two main expressive techniques are role playing and third-person technique.

Role Playing In role playing, respondents are asked to play the role or assume the behavior of someone else. The researcher assumes that the respondents will project their own feelings into the role. These can then be uncovered by analyzing the responses, as shown in the department store patronage project.³³

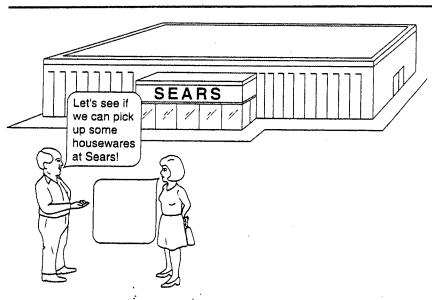
DEPARTMENT STORE PATRONAGE PROJECT

Role Playing

Respondents are asked to play the role of a manager handling consumer complaints. How the role players handle the complaints reveals their feelings and attitudes toward shopping. Respondents who treat complaining customers with respect and courtesy indicate that they, as customers, expect these attitudes from the store management.

Third-Person Technique In third person technique, the respondent is presented with a verbal or visual situation and the respondent is asked to relate the beliefs and

FIGURE 6.4 ◆ A Cartoon Test



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RESEARCH DESIGN FORMULATION attitudes of a third person rather than directly expressing personal beliefs and attitudes. This third person may be a friend, a neighbor, a colleague, or a "typical" person. Again the researcher assumes that the respondent will reveal personal beliefs and attitude while describing the reactions of a third party. Asking the individual to respond in the third person reduces the social pressure to give an acceptable answer, as the following example shows.

EXAMPLE

What Will the Neighbors Say?

A study was performed for a commercial airline to understand why some people do not fly. When the respondents were asked, "Are you afraid to fly?" very few people said yes. The major reasons given for not flying were cost, inconvenience, and delays caused by bad weather. However, it was suspected that the answers were heavily influenced by the need to give socially desirable responses. Therefore, a follow-up study was done. In the second study, the respondents were asked, "Do you think your neighbor is afraid to fly?" The answers indicated that most of the neighbors who traveled by some other means of transportation were afraid to fly.³⁴

Note that asking the question in the first person ("Are you afraid to fly?") did not elicit the true response. Phrasing the same question in the third person ("Do you think your neighbor is afraid to fly?") lowered the respondent's defenses and resulted in truthful answers. In a popular version of the third-person technique the researcher presents the respondent with a description of a shopping list and asks for a characterization of the purchaser. 35

We conclude our discussion of projective techniques by describing their advantages, disadvantages, and applications.

Advantages and Disadvantages of Projective Techniques

Projective techniques have a major advantage over the unstructured direct technique (focus groups and depth interviews): they may elicit responses that subjects would be unwilling or unable to give if they knew the purpose of the study. At times, in direct questioning, the respondent may intentionally or unintentionally misunderstand, mist interpret, or mislead the researcher. In these cases, projective techniques can increase the validity of responses by disguising the purpose. This is particularly true when the issues to be addressed are personal, sensitive or subject to strong social norms. Projective techniques are also helpful when underlying motivations, beliefs and attitudes are operating at a subconscious level. ³⁶

Projective techniques suffer from many of the disadvantages of unstructured direct techniques, and to a greater extent. These techniques generally require personal interviews with highly trained interviewers. Skilled interpreters are also required to analyze the responses. Hence, they tend to be expensive. Furthermore, there is a serious risk of interpreter bias. With the exception of word association, all techniques are open ended, making the analysis and interpretation difficult and subjective.

Some projective techniques such as role playing, require respondents to engage in unusual behavior. In such cases the researcher may assume that respondents who agree to participate are themselves unusual in some way. Therefore, they may not be representative of the population of interest. As a result, it is desirable to compare finding generated by projective techniques with the findings of the other techniques that permit a more representative sample.

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MEAD DATA CENTRAL, INC.,

Plaintiff,

: CIVIL ACTION NO. : 88-2854 (DNE)

-vs-

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TOYOTA MOTOR SALES, U.S.A., INC. : and TOYOTA MOTOR CORP.,

Defendants.

PREFILED DIRECT TESTIMONY OF DR. JACOB JACOBY SUBMITTED BY PLAINTIFF MEAD DATA CENTRAL, INC.

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> PLAINTIFF EXHIBIT

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BACKGROUND AND QUALIFICATIONS

- Q. State your name and address.
- A. Jacob Jacoby, 3 Washington Square Village, Suite 16-I, New York, New York 10012.
- Q. What is your occupation?
- A. I am a Professor at New York University. I hold an endowed chair in the business school the Merchants Council Professorship in Consumer Behavior and Retail Management.
- Q. How long have you been a Professor at New York University?
- A. Since 1981.
- Q. What degrees do you hold?
- A. I hold baccalaureate and master's degrees in psychology from Brooklyn College and a doctorate in social psychology from Michigan State University.

- Q. What are your areas of expertise?
- A. Consumer psychology, consumer behavior, and marketing research. I am a psychologist who concentrates on the applications of psychological principles in the commercial marketplace.
- Q. Have you authored any books or articles, Dr. Jacoby?
- A. Over 100 articles and approximately 10 books.
- Q. What courses do you teach?
- A. At the undergraduate level, consumer behavior. At the graduate level, consumer behavior, behavioral science applications to consumer behavior, and research methodology.
- Q. Would you identify the document marked for identification as Plaintiff's Exhibit 141?
- A. It is my <u>curriculum vita</u> listing, among other things, my publications, papers and speeches I have given, my memberships in professional organizations, the professional honors and awards I have received, and some of the consulting work I have done.
- Q. Are you a lawyer?
- A. No.

- Q. Prior to your work on this case, were you familiar with Mead Data Central's LEXIS service?
- A. Yes. I have been familiar with the LEXIS service for at least 10 years, through its use in business schools, my own use of it, its use by lawyers with whom I have come in contact in my consulting work, and through my work with the U.S. Trademark Association. I also have seen advertisements for the LEXIS service, most recently, as I recall, in Advertising Age.

SCOPE OF RETENTION

- Q. Have you been retained as an expert in this case?
- A. Yes. I was retained by Mead Data Central's counsel in approximately June of 1988.
- Q. How were you first contacted and by whom?
- A. I was first contacted by telephone by Mr. Ringel of the Cahill Gordon & Reindel firm. Mr. Ringel briefly outlined the nature of this litigation for me and asked if I would be available to consult with Mead Data Central's attorneys about trademark dilution, whether it occurs in the marketplace and, if it does, under what circumstances it can and does occur.

- Q. What was your response to Mr. Ringel?
- A. I told him that I was intrigued by this concept of trademark dilution. I had not encountered it previously as a legal concept, but it seemed to me that the antidilution law was addressing a very well-recognized phenomenon in consumer psychology. Frankly, I was very interested in the prospect of thinking about and exploring whether, as a matter of consumer psychology, trademark dilution does occur.
- Q. Did you have further contacts with any attorneys for Mead Data Central?
- A. Yes. I met with attorneys from Smith & Schnacke and Cahill Gordon on one occasion; had another meeting with Cahill Gordon attorneys, alone; and spoke with attorneys from both firms on several occasions.
- Q. Just briefly, what were the purposes of those conversations?
- A. Some were purely ministerial, such as scheduling my deposition. Others were occasions where I outlined my analysis and thinking for them.
- Q. Have you met or discussed this case with any attorney from the Arnold, White and Durkee law firm?
- A. No; although I have worked with them on other occasions unconnected to this lawsuit or Mead Data Central.

- Q. Have you met or discussed this case with any attorney from Kenyon & Kenyon, Toyota's counsel?
- A. I received a telephone call from an attorney at Kenyon & Kenyon asking me if I was available to consult for Toyota in this litigation. I told him I was not available and could not and would not discuss the matter further. This call was after I had spoken to Mr. Ringel.

INITIAL INVESTIGATION OF DILUTION CONCEPT

- Q. Professor Jacoby, would you describe what you have done in connection with your retention in this case?
- I reviewed the New York antidilution statute and some A. pleadings in this case and in an action Toyota filed against Mead Data Central in California. I looked at three articles discussing the antidilution statutes. As I mentioned, although I was not familiar previously with the legal notion of dilution, or antidilution statutes, I was familiar with what seemed to me to be the same or parallel concept in the field of psychology. I did some thinking about it and after I had tentatively formulated my views, I consulted with several of my colleagues whose fields of concentration are more pure cognitive psychology and less consumer oriented than mine, and explored with them whether they agreed with my tentative conclusions. I have continued to think about the questions posed to me and satisfied myself that the conclusions I have drawn and the opinions I hold are supported by the general body of learning in my field.

- Q. Who were the colleagues with whom you consulted?
- A. Professor Jerry C. Olson, who is Chairman of the Department of Marketing at Penn State University; and Professor Tory Higgins, a cognitive psychologist at N.Y.U. I also consulted with Professor Sam Glucksberg, formerly the Chairman of the Department of Psychology at Princeton University.
- Q. What was the nature of your consultations with each of them?
- A. With Tory Higgins it was a discussion over lunch. I told him I was looking at dilution and that it seemed to me that the statute articulates a clear legislative recognition of certain psychological phenomenon. I gave him my tentative views on the subject and he concurred with them.

I called Jerry Olson on the telephone because I knew, from prior work I had done with him, that he was extremely well-versed in the current literature in the field of cognitive psychology. Again, I shared my views with him and he concurred with them.

Pinally, I asked Sam Glucksberg to prepare a summary of what the basic, scholarly literature had to say about the matter. As I thought about the question of dilution and the psychological phenomenon that the statute recognizes, I came to the conclusion that the literature in the field provided strong support for the premise of the statute and described how it occurred. Out of what may perhaps be described as an excess of caution on my part, however, I wanted someone of Sam's stature in the

field of pure cognitive psychology to react to and test my thinking. He did so, and confirmed that my views and observations were overwhelmingly supported by the scholarly literature.

QUESTIONS ADDRESSED

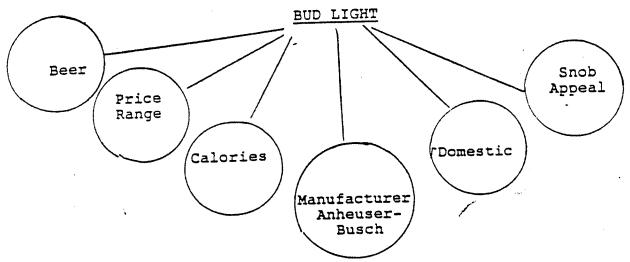
- Q. Professor Jacoby, what specific questions were you considering?
- A. As I analyzed the situation, there were really four separate but related questions.
 - (i) Do trademarks and brand names operate in the marketplace to evoke an association with products or services sold under that mark, and if they do, what is the utility or effect of evoking such associations?
 - (ii) How, as a matter of psychology, is such an association generated in the marketplace?
 - (iii) How, if at all, as a matter of psychology, does dilution of a trademark occur in the marketplace and, more specifically, how, if at all, does the use of a similar mark weaken or dilute the effect of associations previously established for that mark? and
 - (iv) Whether, in my opinion, Toyota's proposed use of Lexus for its cars was likely to weaken the association between LEXIS and MDC's service and products.

- Q. Did you specifically address each of these questions?
- A. Yes, I did.
- Q. How did you go about doing so?
- A. I analyzed each of the issues and brought my more than twenty years of expertise and learning in psychology and consumer behavior to bear on the analysis of each. As I have previously testified, I also consulted several respected cognitive psychologists and confirmed the accuracy of my conclusions with them.
- Q. How many hours have you devoted to this project?
- A. Approximately 20 hours until I formulated my conclusions and opinions and, since that time, approximately 12-14 additional hours devoted to satisfying myself that I am correct in the conclusions I have reached and the opinions I have formed.
- Q. Have you reached a conclusion or formulated an opinion as to each of the four above-listed questions?
- A. Yes, I have.

HOW TRADEMARKS OPERATE IN THE MARKETPLACE

- Q. As a matter of consumer psychology, do trademarks or brand names operate in the marketplace to evoke an association with products or services sold under that mark?
- A. Yes. A trademark or a brand name (I use the terms trademark and brand names interchangeably because any legal distinctions between them are not important to my analysis) is a very powerful type of information which, in theoretic terms, is known as an "information chunk." Given a brand name or trademark with which a consumer is familiar, the consumer can deduce a host of associated information about the product from the name itself. Stated differently, once the consumer has learned them, trademarks or brand names evoke a whole set of attributes and thoughts about the product itself.

To give you an illustration, if I were to say "here's a six-pack of beer which sells for \$3.79 a six-pack, all you know is that this six-pack of beer costs \$3.79. On the other hand, if I say, "here is a six-pack of BUD LIGHT, " the consumer is able to deduce a host of information from that name, including the fact that it is beer, the manufacturer's name, the likely price, the relative calorie count, whether its domestic or imported, its snob appeal, etc. The brand name or trademark is a shorthand label used to identify and differentiate.products. The brand name, through a process termed "spreading activation," produces in the mind what is known in the field of cognitive psychology as a "fan of associations." To illustrate, upon hearing the name BUD LIGHT, a consumer might activate a "fan" that looks something like the following:



Each of these attributes is not stored and retrieved by the mind as a jumble, but rather BUD LIGHT is the peg upon which they all hinge and the means by which they are all activated and recalled. The brand name or trademark activates in the mind a network of relevant associations with features, attributes and characteristics of the product or service. The meaning of a brand name to the individual is defined by the network of mental associations that he or she draws to or with that brand.

- Q. Is the fact that brand names evoke these associations useful in the marketplace?
- A. The marketplace, as we know it, could not function without brand names. There is considerable evidence which indicates that the brand name or trademark is the single most important piece of information to consumers. It is incontestable that consumers rely very heavily on brand names to make brand purchase decisions and to make judgements as to such features as quality, while

ignoring most (indeed, sometimes all) other available information. If you think about it, there really is only one essential element in an advertisement — the brand name of the product being advertised. You could eliminate or change every other element in any given piece of advertising and still promote the product; but if you eliminate the brand name or trademark, you are advertising nothing. This point is confirmation of the importance of a brand name or trademark in the marketplace.

GENERATION OF FAN OF ASSOCIATION

- Q. How is this fan of associations for a product generated for a specific brand name?
- A. This generation of associations is primarily the role of advertising and promotion. They aim to convey two main items of information the brand name of the product or service and its associated features, attributes, and characteristics.
- Q. What mechanisms are used by advertising to establish these associations?
- A. Advertisers generate and then reinforce or stamp in such brand-attribute associations primarily in two ways:

 (i) frequent repetition; and (ii) efforts to make their brand salient -- to make it stand out from the rest.

- Q. Would you describe how frequency, repetition and saliency establish these associations.
- A. Take a brand name or mark like LEXIS, which prior to 1972 probably had no meaning for most people and certainly did not mean computer-assisted legal research service. How does one become aware of it? How does someone begin to associate it with a product or attributes of a product?

The answer is by being exposed to advertising and promotional communications linking LEXIS to a computer-assisted research service and an entire constellation of attributes of the service. You build up a network of association tying LEXIS with a service or product and a whole constellation of attributes, by repeating that message and the more salient the message is in its environment, the faster and more crisply the associations are established.

Prior to 1972 an attorney would not have connected LEXIS with Mead Data Central's service. Today, most attorneys probably would. That association is the result of exposure which ties the brand name to the associated characteristics of the service and makes it distinctive.

- Q. Does the choice of media or the extent of the advertising done influence the establishment of a network of associations with the brand name?
- A. The extent of the advertising influences the speed with which you generate these associations because the more extensive the advertising, the more frequently you expose more consumers to the message, "associate this brand name with these attributes." That does not mean,

however, that this fan of associations can be built up only with an extensive, intense media campaign. You can, of course, build this fan of associations at a more measured pace over time and, in fact, that is what most companies do, because they simply cannot afford a media blitz sufficient to establish their brand names virtually overnight. Others can afford to and do so. The Accura Division of Honda is a good example of the latter. Five years ago, Accura meant nothing to most people. Today, consumers exposed to Honda's advertising associate it with automobiles, in a certain price range, etc. That change happened rather quickly because there was extensive advertising.

The type of media used does not really affect whether or not you establish the fan of associations with your brand name in the minds of those consumers for whom you intend your product, so long as your choice of media is one which is appropriate for your target population. It does not matter, for example, whether you use selected print media or television advertising so long as the population you are targeting reads these selected print vehicles or watches television, respectively. It would matter if, for example, your product was targeted at a consumer population which by and large does not read, but does watch television. If you then chose print media to deliver your message, it would not result in as frequent exposure and thus, would take longer to establish.

One must keep in mind that the utility of a brand name to evoke the fan of associations with a given product focuses on the minds of individual consumers. It is not crucial what medium you use to reach that mind, but rather that you reach it, reach it frequently, and reach it in salient fashion. It also may be that you reach

more than the consumer population you have targeted by using some media or particular advertising vehicle and that has the added result of helping to establish associations even beyond the group on whom you are concentrating. For example, one might wish to concentrate on reaching attorneys and choose, as a vehicle to do so, The Wall Street Journal. You would also reach many other readers of that publication. Thus, while your advertising goal may be to establish or to strengthen the fan of associations with a brand name with particular attributes of the service of interest to attorneys, you also will do so with non-attorney readers.

The utility of a brand name is its ability to evoke this fan of associations and it really does not matter how you do it so long as you do achieve that result in the minds of those consumers to whom you market the product.

THE PROCESS OF DILUTION

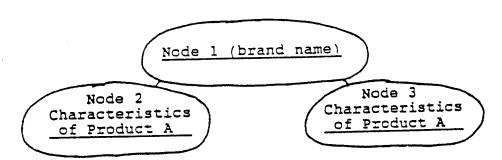
- Q. Professor Jacoby, as a consumer psychologist, can the introduction and promotion of a product using a trademark or brand name similar to a trademark or brand name already used to identify a different type of product have any effect on the first user's trademark or brand name?
- A. Absolutely.

- A. In simplest terms, the previously established network of association to the mark for the product of the first user in the mind of the consumer is weakened.
- Q. Why does this weakening occur?
- It comes back again to the fan of associations that a brand name evokes. When a brand name is used for a A. particular product and when, through the mechanisms we have previously discussed, that brand name evokes, in the consumer's mind, associations with the attributes of that particular product, that brand name has achieved marketing utility for the provider of the product. When a second producer comes along and again, through the same mechanisms of advertising and promotion, takes the same or a very similar brand name and now establishes an additional, different set of associations with the name in the mind of that consumer, a set of interference processes arise, the net effect of which is that the association of the brand name with the attributes of the first product is weakened. The brand name now has a larger fan of associations, and as psychologists recognize, the larger the fan, the weaker the association of a brand name with any one of the properties that is evoked by it.

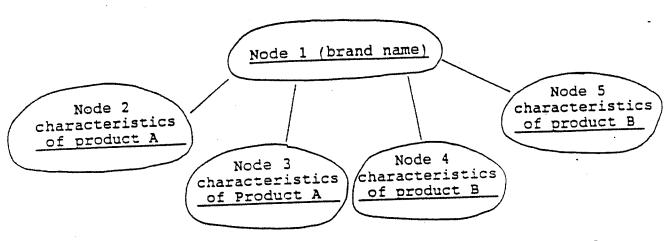
So the introduction of additional concepts associated with a brand name inevitably weakens previously established associations with that same brand name, and may also change them. For example, a negative association with one of the two products would now be part of the fan of association made by a consumer when the brand name is mentioned, even if the reference was

to the other product which was not the generator of the negative feeling. To illustrate, for someone of my generation the brand name Edsel, even if used to identify a toaster, evokes unfavorable associations which have nothing whatsoever to do with the attributes of that toaster. This is inevitable as a matter of psychology. It is due to the way in which the mind sorts and stores information.

- Q. How does the mind store and sort information?
- A. The basic process is as follows. Concepts or information bits, which psychologists refer to as "nodes" are stored in memory along with other concepts to which they relate, other "nodes." When the original concept is activated through external stimuli -- sight, sound, smell, touch -- a network of other related concepts are activated and retrieved from memory. Essentially, this process may be diagramed as follows:



You will notice the similarity to the fan that I drew previously for BUD LIGHT, because the fan of association for a brand name occurs in just this manner. When you introduce an entirely different set of concepts associated with the same brand name but unrelated to the preexisting ones -- say nodes 4 and 5 -- the mind will retrieve these as well once the name is activated.



The greater the number of concepts retrieved, the less distinct the association with any one concept.

- Q. You have explained how the introduction of a product under a brand name already associated with another product produces a larger fan of associations, but what is the practical effect of such an occurrence?
- A. It can affect the clarity with which associations are recalled and it can affect the ability to remember some of those associations at all.
- Q. How does it effect the clarity of the associations?
- A. The effect it produces depends on whether the brand name is encountered in context or not. If a word or brand name with two or more meanings is encountered by itself, that is, not in any context, then, according to the scholarly research, all meanings are automatically activated. For example, if you hear or see the word "fast" the mind will automatically activate both meanings -- speed and food deprivation.

If the word is seen or heard in a context which specifies which of the two meanings is intended, one of two things happens. If the context clearly specifies the dominant or more frequently used meaning, then only that meaning is likely to be brought to mind, as in "he ran very fast in the first race of the track meet."

However, if the context clearly specifies the less frequent, non-dominant meaning, then, as the scholarly literature shows, both meanings automatically will be brought to mind, as in "to atone for his sins, he thought he would fast." If neither meaning is dominant, then both meanings will likely be brought to mind regardless of context.

- Q. As a matter of psychology, is there the possibility of both meanings being activated when the dominant meaning is apparent from the context?
- A. Yes.
- Q. How might this happen, for example, with advertising?
- A. When attending to incoming information such as from an advertisement, the human mind operates sequentially even though the information may be provided all at once. You can not pay attention to everything in an advertisement at the same time. So, if you hear a word or brand name with more than one product association, then regardless of product category, it is likely to activate these different traces they would be there in the mind and subsequent contextual cues will assist in the sequential process of clarifying the nature of the reference. Initially, however, even when the dominant mark is encountered in context, there will be a lack of

clarity which may last a few milliseconds, or which may last longer and, in some cases, may never be clarified -- especially if the individual does not attend to the entire ad, as is often the case.

- Q. How does a mark or brand name become dominant?
- A. It is through the concepts I discussed earlier -through repetition and frequency of exposure to the
 particular consumer. In the consumer world it is
 principally through advertising and the amount (extent
 and intensity) of advertising.
- Q. You also referred previously to the fact that the introduction of a product with a brand/name similar to another product can affect the ability of an individual to remember the associations with the first product to use the name. How does that happen?
- A. That is the process psychologists call "interference effect," and is a major cause of forgetting or misremembering. If you first associate the brand name "A" with product "B" or its characteristics and then learn to associate the brand name "A" with product "C" or its characteristics, the memory for the A-B set of associations will be impaired and you again have a weakening in psychological terms of the ability to recall the association between A and B.
- Q. Does it matter whether a consumer sees or hears a brand name?

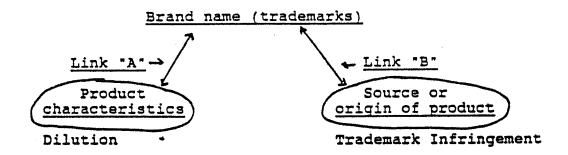
A. Not if the two are acoustically similar. Regardless of whether one sees or reads a word, the sound of that word is registered in memory. Even for fluent readers who may not be aware that they are doing it, this phenomenon, which is known as phonological recoding, occurs. Thus, two words, even if not spelled identically, will be remembered as identical if their pronunciation is identical.

A good example of this is Purdue which is the name of a mid-western university, and Perdue which is the purveyor of poultry. Very few people even recognize the difference in spelling and, while twenty-five years ago most people upon hearing "Purdue" would have made the association with the university, if they made any association at all, today, probably most people would associate "Purdue" with chickens, or Frank Perdue's Company, and maybe the university as well, without even being cognizant of the difference in spelling. In a very real sense, this is dilution by a non-identical word.

- Q. You have said that in psychology, a phenomenon occurs that is similar or parallel to the legal concept of dilution. Can you tell the Court what you mean when you use the term dilution?
- A. I use the term to describe the weakening of the associations between a brand name (trademark) and a product's characteristics. Since the mind stores the characteristics of a product under a brand name (<u>i.e.</u>, it stores them affixed to a label, not as disassembled characteristics), the promotion of a substantially identical brand name will weaken the selling power (the product-evoking abilities) of that brand name.

- Q. Does this psychological concept depend on whether or not the products, as opposed to the brand names, are similar or closely related?
- A. Not at all.
- Q. Then will you distinguish your analysis of dilution from the likelihood of confusion analysis that you have undertaken in trademark infringement actions?
- A. Yes. In consumer behavior, dilution is the weakening of the associations between a brand name and that product's characteristics. In contrast, the likelihood of confusion analysis that I and other experts have undertaken in traditional trademark infringement actions focuses on the link between the brand name and the origin or source of that product.

These two ideas are illustrated as Links A and B, respectively, in this simple diagram:



This is not to say that Toyota's use of Lexus may not also cause confusion as to the source of the LEXIS service. These are not mutually exclusive concepts. Indeed, in light of the similarity of the two names, the

increasing awareness of Japanese investment in American business, the dominance of the Japanese in electronics, the increasing use and promotion of computers in cars, and the fact that some automobile manufacturers -- such as General Motors and Hyundai -- also provide computers or computerized services. I believe there is a real potential for confusion. However, the focus of dilution is on a different linkage -- that of the brand name to product -- as opposed to brand name to source.

TOYOTA'S USE OF LEXUS WILL DILUTE MDC'S MARK LEXIS

- Q. Professor Jacoby, have you considered whether Toyota's introduction of a line of automobiles under the name Lexus is likely to have an effect on MDC's use of its mark LEXIS?
- A. Yes, I have.
- Q. Have you formed an opinion as to that subject?
- A. Yes, I have.
- Q. What have you taken into account in formulating that opinion?
- A. My knowledge and expertise in my field of consumer psychology and, in particular, the psychological principles which I have previously discussed. I also start with certain facts. First, today LEXIS triggers a fan of associations with the characteristics or attributes of MDC's services and related products in the

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minds of some consumers. While I can conservatively state that this fact was made known in my reading in this case, I should note, however, that I know this to be true from my own professional experience. Second, Toyota will advertise its new Lexus brand cars fairly extensively. This fact is founded both on my own observations of the level of advertising used by other automobile manufacturers as well as Toyota to introduce and promote new cars in the past, on my professional knowledge of the extensive amount of exposure necessary to promote a new automobile and make it stand out from the host of other models on the market, and on Mr. Illingworth's deposition. I am not focusing on any particular dollar amount but just an amount in excess of what MDC has historically spent to advertise LEXIS, and this fact figures into my analysis only in providing the basis for my conclusion that in the minds of some consumers, the association of LEXIS with cars will become dominant.

- Q. What is your view as to whether Toyota's introduction of a line of automobiles under the name Lexus is likely to have an adverse effect on MDC's use of the LEXIS name?
- A. The use of Lexus by Toyota will be likely to weaken the existing association of LEXIS and MDC's services and products by making those associations less distinct in the consumer's mind, and thus, deprive MDC of the full effect and utility of its name LEXIS.
- Q. Why?
- A. The two names are indistinguishable acoustically. This is because the second vowel in each of the two names is unaccented and preceded by "lex" and followed by "s."

In these circumstances, both the "i" and the "u" would be pronounced as a schwa, the neutral vowel sound of the English language.

They are also highly similar visually. In English spelling these vowels, "i" and "u", in the context of the letters "lex_s" are functionally interchangeable because virtually no English words depend upon the distinction. (This is not to say there is never reliance on the distinction between "i" and "u" in the English language, but rather that in combination with Lex_s, there is none. For example, in the context of the letters "d_g" an "i" and "u" are not interchangeable and it makes a difference whether the word is "dig" or "dug." In the context of "lex_s", however, they are interchangeable just as the "u" and "e" are interchangeable in Purdue and Perdue.)

This functional interchangeability results in people rarely remembering which one they saw and confusing them. Not only are they likely to be confused, but given the acoustical similarity of pronunciation between LEXIS and Lexus, regardless of whether they are seen or read, phonological recoding, which I have previously discussed, will occur and they will be remembered similarly. As a result of this phonological recoding, after Lexus would be given media advertising and attention, we would have a situation where something that registers mentally as essentially the same word is associated with different meanings (i.e., gives rise to a different and possibly overlapping network of mental associations) in the minds of those consumers who happen to know of both products. I know from my own experience that LEXIS is widely known to lawyers and those who work in the legal area and that process is likely to occur in the mind of each of those individuals.

- Q. What will happen when a consumer encounters LEXIS or Lexus?
- When "lexis" or "lexus" is seen or heard in isolation, Α. it likely will evoke both meanings for consumers who are aware of both products. Just the way a dictionary defines individual words by using a series of other words, the meanings of individual words in a person's mind do not exist in isolation, but in a context of surrounding meanings also stored in memory. presence of lexis/lexus in either form is likely to trigger a network of related associations. technical term for this phenomenon is "spreading activation. " The problem is that the individual will not be able to determine just which is the proper set of associations -- those connected to LEXIS or those connected to Lexus. To the extent that the networks for each name contain some similar associations (e.g., the name refers to something produced by a large company and offered for sale), the indeterminacy is likely to be heightened.

When the word lexis/lexus is seen in context, then one of two things will happen. If the context clearly specifies the more frequent or more dominant meaning (which would likely be those associations to Lexus, given what Toyota will need to spend on mass media advertising to differentiate its automobiles from other automobiles), then only that meaning (i.e., network of associations) will be brought to mind. However, when the context clearly specifies the less frequent and less dominant meaning (which, given the observations regarding mass media advertising just noted, we would

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expect to be LEXIS), then both the most frequent and less frequent sets of meanings will likely be brought to mind, <u>i.e.</u>, we will have dilution.

In other words, the emergence of a second network of related meanings, especially if this second-comer becomes much more dominant in the consumer's outside world and inner mind, is likely to muddy up the network of associations that are now uniquely associated with LEXIS. Some of the "mental functioning" implications of this are that it would take longer for the person to correctly identify the party or product being referred to and, even then, there still would be some lingering confusion as to specific attributes.

- Q. What are the practical consequences of what you have characterized as the muddying up of the network of associations that are now made to LEXIS?
- The potential is that MDC would lose customers by virtue Α. of the LEXIS mark becoming less distinct in the consumer's mind. The sales implications of even a momentary hesitation in correct identification could be substantial. Specifically, for any given product category, the consumer stores only a sub-set of the available purchase options in mind, namely, those brands that they know of and would favorably consider as potential purchase options. This sub-set is called the "evoked set." When asked to recall all these options, the consumer necessarily does so in sequential fashion (e.g., Bud Light, Miller Lite, Amstel Light, etc.). There is solid evidence that First Brand Awareness is the single best predictor of both repeat purchase behavior and brand switching behavior. Ergo, anything which muddies up the meanings associated with LEXIS and

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thereby causes it to fall from first to some subsequent spot in the brand awareness hierarchy is also likely to exert an impact on its sales performance.

To give you a hypothetical situation, many law firms and law schools have both the LEXIS service and the WESTLAW service. The user must make a choice as to which service to use each time a research need arises. To the extent that you have now created some degree of unclarity in the consumer's mind about LEXIS (that there may be other things activated when they hear LEXIS, the first of which may no longer be information retrieval), the individual may, as a result, be inclined to evoke first in his or her mind a brand name which is not similarly handicapped, such as WESTLAW, when considering options. Since the first brand evoked is, as I have said, a very good predictor of consumer choice, that person is more likely to choose WESTLAW to satisfy his specific need to retrieve information.

- Q. Is your opinion that Toyota's use of Lexus will be likely to result in consumers less clearly associating LEXIS with the attributes of MDC's services dependent or premised in any way upon an assumption that MDC's use of the LEXIS mark to identify its services and related products is the only use of the name LEXIS in this country?
- A. No, it is not. Yet let me observe that my professional life is devoted to the study of the marketplace and what is happening there and I personally have never encountered any use of LEXIS to identify any product or service other than those provided by MDC. Counsel has made me aware that there is at least one other federal trademark registration for the mark LEXIS Ltd. for use, I believe, on maternity clothes, and there may be uses

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of it in other contexts or in corporate names, but such uses, if any, are not known to me. However, even if such uses exist, that does not change my opinions and conclusions, because they focus on what happens in the mind of the consumer who today activates either exclusively or primarily a network of associations with LEXIS that relate to MDC's services. If some of those consumers happen to activate an association with some other product or service as well, the fan of associations they presently make will nevertheless become less distinct if they are exposed to Lexus advertising and now associate LEXIS with attributes of those automobiles as well.

- Q. Assuming, hypothetically, that there is some use of LEXIS in the marketplace already, other than to identify MDC's services and related products, would this other use of LEXIS also be likely to have the same effect as Toyota's use of Lexus?
- Theoretically, if a consumer is aware of both uses, it Α. would have a similar effect on that particular consumer, but I am unaware of any use of LEXIS by anyone other than MDC which has received the kind and extent of advertising and promotion that Toyota will have to have to introduce a new line of automobiles. In reality, LEXIS is not an Acme or an Allied. One need only look at the Manhattan telephone directory to perceive the distinction. It is far less likely that the fan of associations made by consumers who associate LEXIS with MDC's services and products are already weakened by multiple additional associations. Moreover, I think it unlikely that any other use of LEXIS, if such exists, has become the dominant meaning in the minds of those consumers who associate LEXIS with MDC's services, or that the number of consumers who already may make more

than the association in any way comes close to the number of consumers that Toyota's advertising will reach.

- Q. If, hypothetically, there is one or more uses of LEXIS to identify something other than MDC's services and related products in the marketplace, and if, hypothetically, some consumers already associate LEXIS with characteristics of these other products or services as well as with those of MDC, will Toyota's use of Lexus have any effect on MDC's LEXIS mark?
- A. Yes, it will, because, as I have previously testified, each time you expand the fan of associations made by a consumer with a brand name you weaken the preexisting associations. Here we are contemplating a use by Toyota which is nationwide in scope and which, given the nature of the product, must be heavily supported by intensive advertising designed to foster the association Lexusautomobile in order to establish, position and distinguish those models from the mass of other automobiles offered for sale. Therefore, such a result is inevitable.

Dated: New York, New York October 19, 1988 STATE OF NEW YORK)

COUNTY OF NEW YORK)

Jacob Jacoby, being duly sworn, deposes and says that each of the above answers in the Prefiled Direct Testimony of Dr. Jacob Jacoby Submitted by Plaintiff Mead Data Central is true and complete; and that if called to testify at trial, I would so testify.

Jacob Jacoby

Sworn to before me this

Notary Public-

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Prefiled

Direct Testimony of Dr. Jacob Jacoby Submitted by Plaintiff

Mead Data Central was forwarded, by regular U.S. mail,

postage pre-paid, or Federal Express, upon the following

party of record this _____ day of October, 1988:

Arthur D. Gray
Kenyon & Kenyon
One Broadway
New York, New York 10004

Attorney for Defendant Toyota Motor Sales, U.S.A. and Toyota Motor Corp.

PROCEEDINGS NAD WORKSHOP III

ADVANCES IN CLAIM SUBSTANTIATION

Jacoby

- Identifying Deceptiveness in Advertising
- Progress Towards Establishing Criteria for Taste Test Claims
- Design/Interpretation/Criteria of Consumer Perception Studies



New York, NY April 29-30, 1991

> PLAINTIFF EXHIBIT

Experimental Designs in Deceptive Advertising and Claim Substantiation Research¹

Presented by

Professor Jacob Jacoby

Merchants Council Professor of Consumer Behavior
Leonard N. Stern School of Business, New York University

NAD Workshop III: Advances in Claim Substantiation April 29-30, 1991

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When Bruce Buchanan phoned inviting me to participate in this conference, he suggested several topics as potential foci for this talk. After further discussion, we agreed that, despite its critical importance for claim substantiation and deceptive advertising research, the subject of experimental design remained a much misunderstood and neglected topic. Accordingly, Bruce's principal charge was for me to provide a rudimentary introduction to the vocabulary and logic of experimentation.

As a secondary charge, Bruce asked that I salt my talk with some real world examples drawn from the more than 200 studies that I've designed and conducted for attorneys operating in the realms of claim substantiation, deceptive advertising and trademark infringement. These include a number, I'm happy to say, for the preceding speaker, Miriam 'Siroky, such as the three I conducted for the plaintiff in Gillette v. Wilkinson Sword (1991).

However, as I began preparing this talk, it became obvious that providing an introduction to some of the rudiments of experimental design in a cohesive and readily understandable manner would require most of the time that I have. Hence, I beg your indulgence for what will essentially be the most professorial type of presentation that I have ever delivered to an audience consisting primarily of practitioners. But if, in the process, I can get at least some of you to appreciate the complexities that are involved, it will be worthwhile.

Are Experimental Designs Always Necessary?

Let me emphasize at the outset that not all the important questions regarding claim substantiation and deceptive advertising require the use of experimental designs. Far from it. Many important questions are more basic. It is only when the question is one of causation that experimental designs are called for. Moreover, the same case can involve questions of both a causal and noncausal nature, thereby calling for the use of both experimental and nonexperimental research designs.

For example, both yesterday and today, Hugh Latimer and a number of others spoke about the Federal Trade Commission's case in regard to Kraft's claim that each of its "Singles" cheese slices was made from five ounces of whole milk. The FTC was concerned that by advertising this fact and placing it on the package, a substantial number of consumers would come to believe that each slice also contained an amount of calcium equivalent to that found in five ounces of whole milk. Holding such a belief would be incorrect since almost 30% of the calcium content is lost during the processing. Note that the FTC's theory of the matter was essentially causal, namely, exposure to the Kraft advertising and/or packaging would cause relevant consumers to believe that each slice contained an amount of calcium equivalent to that found in five ounces of whole milk (see FTC, 1991).

In contrast, the research I conducted for Kraft (see Jacoby, 1988) was based on a different theory. Essentially, it held that it really didn't matter whether consumers extracted the erroneous belief that the FTC claimed would be extracted. Though Kraft believed that the presence of calcium was important to consumers, it contended that the difference between 100% and 70% of the calcium found in five ounces of whole milk — a difference that amounts to only 3% to 4% of the Recommended Daily Allowance for calcium — was an amount so trivial that it would not be something that most consumers considered important enough to factor into their purchase or usage decisions. This being so, by the FTC's own definition, since it was not "material," any mistaken belief regarding this matter could not be considered deceptive (see Ford & Calfee, 1986).

Accordingly, my study was directed toward determining whether, once informed, knowing that each Singles slice contained, not 100%, but 70% of the calcium found in five ounces of whole milk would be considered material to relevant consumers, not what <u>caused</u> them to possess such knowledge or consider it material. Thus, while the FTC's theory of the case required an experimentation strategy, at least this portion of Kraft's theory of the case did not.

Whence the Focus on Causation?

Much claim substantiation and deceptive advertising research, however, does involve causal questions.

The focus on causation derives from both the letter and intent of the law. The relevant portion of the Lanham Act speaks of advertising that "... is likely to cause confusion, or to cause mistake, or to deceive." Similar language and emphasis is to be found in the FTC's definition of deceptive advertising and in the definition of misleading prescription drug advertising that I was commissioned to develop for the Food and Drug Administration in 1974.2 Thus, from the perspective of the courts, and the key federal agencies that regulate advertising and packaging, the issue is not whether the consumer is confused or deceived, but whether the communication in question caused that confusion or deception. If such a causal link cannot be satisfactorily demonstrated, if the false belief is due to something other than the advertising, then the rules of fair play and jurisprudence --- wherein entities are considered innocent until proven guilty beyond a reasonable doubt - all suggest that it would be unfair to take action against either the advertising or the advertiser. It is under these circumstances that experimental designs are called for.

A Primer on Experimental Design

What, then, is the essence of experimental design? Though experimental designs vary considerably in their level of sophistication, all involve two fundamental components; namely: (1) that some change be introduced into a system and (2) there be a subsequent assessment of the presumed impact of that change on one or more other factors. Do we want to know if continuing to increase the air pressure in a balloon will cause the balloon to burst? Why don't we introduce a change into the system (that is, blow up a balloon) and find out? Do we want to know if being hungry causes people to become more aggressive? Why don't we get a few volunteers, deprive them of food, and find out? Do we want to know if an ad will cause people to be more interested in buying the product being advertised? Why don't we show some people the ad and find out? The planning of an experiment begins with considerations such as these.

The Special Vocabulary and Notation of Experimentation

Because experimental designs can become quite

complex, a special vocabulary and notation system has evolved to simplify description. These need to be explained before we can proceed.

Experiments focus on a presumed cause and an observed effect. The presumed cause is termed either the stimulus, treatment, or independent variable. Respondents who are exposed to the presumed cause are called "subjects" and are said to comprise the experimental or treatment group. The observed effect is called the response, outcome, or dependent variable because its appearance is presumed to be activated by and dependent upon the prior appearance of the presumed cause. By convention, treatment interventions are denoted by the letter X, while dependent variables are denoted by the letter Y. By custom, the letter 0 (which stands for observation) refers to the act of measuring the dependent variable. Thus, the basic vocabulary of experimentation may be summarized as follows:

Presumed cause =
Independent variable
Stimulus variable
Treatment variable

Observed effect =
Dependent variable
Response variable
Outcome variable
Y

X

Fully experimental designs also have one or more comparison groups of subjects who are not exposed to the treatment. These groups are termed <u>Control groups</u>. Subjects may be assigned to the Experimental and Control groups either randomly or nonrandomly. By convention, the letter R is used to signify when random assignment takes place.

Ruling Out Rival Explanations

The objective of experimentation is to address the question: "Is it likely that X caused Y?" For example: Is it likely that exposure to certain advertising for a product increased the observed intention to purchase that product? Because of the great number of factors typically involved (as correlates and causes of presumed effects), the variability within these factors, and the difficulty in securing valid measures, this tends to be a difficult question to answer. Even when the number of factors are limited and the relationship is relatively simple, there are almost always a number of plausible alternative explanations for the presumed effect.

Suppose we show someone an ad and subsequently observe the occurrence of a change in purchase intention. Does this mean that exposure to the ad caused the heightened-purchase intention? It might: then again, it might not. The fact that the presumed cause is related to the occurrence of (or changes in) the observed effect (Y) doesn't necessarily mean that the two are causally related. There are data to conclusively show that children with bigger feet spell better. Should we therefore use foot stretchers in an effort to "cause" better spelling? No, because the correlation is not causal. Children with bigger feet spell better because they are older. Suppose higher-buying intentions would have occurred anyway, even without the introduction of the advertisement. Or suppose that such higher-buying intentions were present before we made our assessment, but we didn't know this because we hadn't bothered to check. Or suppose that it was some other factor, not the ad, that caused the higherbuying intentions, and the introduction of the ad just happened to be coincidental. Or suppose the measuring instrument was faulty so that, though it indicated the presence of higher-buying intentions, no such intentions were actually present. Or suppose the introduction of the ad actually produced an impact on some third variable which, in turn, is what "caused" the higher-purchase intentions; for example, exposure to the ad caused an increase in discussions about the product with others and it was these conversations that actually caused the elevatedpurchase intentions.

Rival explanations such as these are always available to account for why our study might show that the presumed cause and the observed effect were related when, in point of fact, they were not causally related. Each rival explanation represents a threat to the conclusion that it was that particular presumed cause that was actually responsible for causing the observed effect. The greater the number of such rival explanations that can be ruled out, the greater the confidence we can have in inferring that the observed relationship is indeed causal. Experimental designs represent the best available strategy for ruling out alternative explanations.

To make the discussion less abstract, let's use the example where an investigator wants to determine whether exposure to a given advertisement causes

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people to become more interested in buying the advertised product. The investigator might have a group of individuals view the advertisement and then measure their purchase intention after viewing the advertisement. This may be illustrated as two points along a time line, where different points in time may be depicted as in Figure 1, unfolding from left to right. Above point 1 is the symbol X, representing the treatment, namely exposure to the advertisement at that point in time. Above point 2 is the symbol 0. representing the subsequent observation (or measurement) of the dependent variable, in this case, purchase intentions. Note that this actually depicts the most basic survey design — the one that is often applied (or, to be more accurate, misapplied) in efforts to determine the effects of exposure to a given ad or advertising campaign. Now let's consider its efficacy.

Suppose the investigator found that, after exposure to the ad, purchase intentions were quite high. Would that mean that the advertisement caused this high level of intentions? Not necessarily. One rival explanation is that the intentions may have been just as high prior to exposure to the advertisement. Somehow, this rival explanation has to be ruled out to gain perspective on the effectiveness of the advertisement. Consider Design 2 (see Figure 2). Here purchase intentions are measured both before and after exposure to the advertisement. By measuring the dependent variable before the treatment, the investigator can evaluate whether the subjects came to the assessment situation already having a high level of purchase intentions.

Note that, in Design 1, there is no basis for comparison. All subjects are exposed to the advertisement and no comparisons are made. In contrast, Design 2 involves a comparison. The "pretest" represents the subjects' purchase intentions prior to exposure to the advertisement. By comparing the pretest with the post-test, the investigator can gain insight into the effectiveness of the advertisement.

Unfortunately, the situation is complicated by additional confounding variables. Even if the investigator observed a significant increase in purchase intentions between the observation taken at Time 1 and that taken at Time 3, he could not necessarily conclude that it was the advertisement

that caused the observed effect. Another plausible explanation is that the subjects' purchase intentions might have increased even in the absence of exposure to the ad. That is, maybe something else may have occurred between Time 1 and Time 3 to raise the purchase intentions. For example, if the post-test measure was obtained one week after the pretest measures, maybe something occurred during that week to raise intentions, independent of the advertisement. To rule out this rival explanation, the researcher could use a Control group — a group that had not been exposed to the advertisement in question. This is depicted as Design 3 (see Figure 3).

Here, the investigator would examine the changes in purchase intentions for the Control group (Group 2). If the amount of change in the two groups was roughly equivalent, then it would be difficult to conclude that the advertisement was responsible for the changes in the Experimental group. After all, the Control group, which was not exposed to the advertisement, showed the same amount of change. In contrast, if the change was appreciably different in the Experimental group than in the Control group, then this would be consistent with an interpretation that the advertisement affected purchase intentions.

Unfortunately, there remain other rival explanations, even for Design 3. In the Experimental group, the investigator measured the purchase intentions prior to exposing the subjects to the advertisement. Perhaps this act of measuring sensitized subjects to reflect on their behavior with respect to the product. Suppose, further, that the advertisement only becomes effective when it is coupled with this preliminary reflective behavior. That is, neither the reflective behavior by itself, nor exposure to the ad by itself, might exert any impact on purchase intentions; hence, the Control group would also exhibit no change. However, when the reflective behavior and the advertisement are coupled together, changes do occur. Design 3 has no way of parsing out this rival explanation (called a testing-by-treatment interaction) from the explanation that it was the advertisement, per re, that changed purchase intentions.

One solution to the testing-by-treatment interaction is to eliminate the pretest in the Experimental and

Control groups. This yields Design 4 (see Figure 4). By comparing the purchase intentions of subjects exposed to the advertisement with the purchase intentions of subjects who have not been exposed to the advertisement, the investigator might gain insights into the effectiveness of the advertisement. Unfortunately, Design 4 cannot rule out yet another rival explanation: Perhaps differences between the two groups are not due to the advertisement, but rather to the fact that the two groups differed in their purchase intentions to begin with. If one tries to accommodate such criticism and adds pretests, then we come back to Design 3 and the problem of the testing-by-treatment interaction.

The most sensible way to handle the above rival explanation is to randomly assign each subject to either the Experimental or the Control group. Such a . procedure would be extremely unlikely to produce a situation where all people who were alike in one way (e.g., had high purchase intentions) were placed into one group, while all people who were alike in another way (e.g., had low purchase intentions) were placed into the other group. This design may be depicted as Design 5 (see Figure 5). By randomly assigning subjects to the two groups, it is unlikely that the (average) purchase intentions prior to exposure to the advertisement will be different in the two conditions. A comparison of the post-test intentions should then provide us with insights into the effect of the advertisement, without the problem of testing effects or the problem of testing-by-treatment interactions.

Some may find Design 5 to be counter-intuitive because it assesses change on a dependent variable by measuring that dependent variable only once for each individual. Our natural inclination might be to assess the dependent variable first, expose the individual to the treatment, and then measure the dependent variable again to see how it changed. The above discussion indicated some of the problems with this strategy. Design 5 is an improvement in that it circumvents many of these problems. It does, however, have weaknesses. Because it uses one assessment per individual, Design 5 only permits us to make statements about the effects of a treatment on average, for groups of individuals. For example, applying Design 5 to the case of evaluating the advertisement, we would be able to make statements

such as "on the average, the purchase intentions were higher for the subjects exposed to the advertisement." In this case, we do not have the ability to make statements about how much the advertisement changed purchase intentions for any given individual. To do so would require both a pretest and a post-test measure. Another weakness of Design 5 is the fact that random assignment does not guarantee that the Experimental and Control groups will have, on average, equivalent purchase intentions. To be sure, it is unlikely that the purchase intentions in the two groups will differ by very much, but it is not guaranteed.

If an investigator wanted to obtain individual estimates of change and also wanted to "check" the effectiveness of random assignment, then he might use Design 6 (see Figure 6). Unfortunately, Design 6 is actually a two-edged sword. On the one hand, it enables us to rule out the possibility that the presumed effect would have existed prior to the presumed cause. On the other hand, the pretest assessment may have been reactive and the event that was actually responsible for the observed effect. Specifically, if we conduct a pretest to assess the subject's intentions to buy a product at Time 1 then, regardless of whether he is in the Experimental or Control group, having been so sensitized to the issue, that person may think about the issue and change his mind by the time a second assessment is made at Time 3. In this case, it would be the pretest assessment at Time 1, and not the exposure (or lack thereof) to the ad at Time 2, that would be responsible for the changes observed at Time 3. Design 6 is effective if one can assume that there is no testing by treatment interaction. Otherwise, it is problematic. As discussed in the following section, this was one of the problems with the FTC's study in the above-mentioned FTC v. Kraft case.

Though it may not seem so, my remarks have thus far only scratched the surface of some of the more fundamental issues involved in experimental design. To this point, the designs outlined are quite simple, referring only to the presence or absence of a single presumed cause (which, if present, exists in a single variation and at a single level of intensity) and the use of a single Control group. Dozens of variations and experimental designs have yet to be noted. However, the reader has been provided with suffi-

cient background for me to now illustrate how the basic designs have been used and misused in deceptive advertising research.

Experimental Design in Deceptive Advertising Research: Two Case Studies

Schering v. Schering AG

In a number of instances, the researcher is confronted with the need for more than one Control group. Consider the Lanham Act case (1987) of Schering, the U.S. pharmaceutical company, against Schering AG, the giant German pharmaceutical firm and its U.S. subsidiary Berlex Laboratories, a New Jersey firm that markets prescription pharmaceuticals known as "X-ray contrast media." These drugs, manufactured by Schering AG and sold through Berlex, are used in hospitals and diagnostic centers throughout the U.S. Though Schering AG is a world leader in the manufacture and sale of numerous pharmaceutical products, at the time the suit was filed, Berlex did not market any other products in the United States manufactured by Schering AG. However, the defendants held that, if they chose to do so, they should be permitted to promote said products in conjunction with the phrase "Schering AG, West Germany."

At the time the suit was filed, it appeared that Berlex would soon be expanding its product line under the Schering AG name with products that would be promoted to physicians and dispensed by pharmacists. So as to prevent these gatekeeper consumers (namely, physicians and pharmacists who, in turn, exert influence over lay consumers) from being misled, Berlex would be inserting a disclaimer in its advertising, on its packages and in its detail materials much like the one it had earlier used in other promotional materials distributed in Europe. This disclaimer would read: "Schering AG, West Germany, is not connected with Schering-Plough Corporation or Schering Corporation, Kenilworth, New Jersey."

In designing the study for this case (Jacoby 1985A), I used a modified version of Design 5. A total of 300 physicians and 300 pharmacists were randomly assigned to one of three groups, either the Experimental group or one of two Control groups, so that

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there were 100 physicians and 100 pharmacists per group. For ease of description, let us think only in terms of the study involving the 300 physicians.

The purpose of the Experimental group was to determine if the disclaimer would produce the desired effect, namely, dispel possible confusion. Since there was the possibility that some physicians might know or guess of the independence of the two Scherings even without exposure to the disclaimer, gauging the impact of the disclaimer required the use of a "no-exposure" Control group — the kind of basic "two-group" situation depicted in Design 5 outlined earlier.

However, based on research that I designed and conducted in an earlier Lanham Act matter (see NFL Properties v. Wichita Falls Sportswear, 1982), there was some reason to believe that exposure to a disclaimer might actually increase rather than decrease the chances of extracting an erroneous message. That is, if Berlex used the disclaimer, it might increase rather than decrease confusion. Given the mountains of evidence showing that consumers often don't read all the verbiage in an ad or package, this could occur if the respondent read or retained only that part of the disclaimer mentioning the key name(s), thereby either neglecting or forgetting the part that spoke of there being "no" connection between the two. This is especially likely to occur when the negator is a single, small, easily overlooked word such as "no" (see Jacoby and Raskopf, 1986). Hence, a second control was used to assess the possibility that the proposed disclaimer would create even greater confusion. It used the following "modified disclaimer" created by simply removing the word "not" from the original disclaimer: "Schering AG, West Germany is connected. with Schering-Plough Corporation or Schering Corporation, Kenilworth, New Jersey." The design can thus be schematized as in Figure 7 As it turned out, the findings showed that both forms of the disclaimer were equally ineffectual in reducing the likelihood of confusion.

FTC v. Kraft

Does including one or more Control groups automatically guarantee a valid study? No. Simply incorporating Control groups provides no guarantee that the findings will be meaningful, useful or valid. Consider the study commissioned by the FTC in its case against Kraft (see FTC, 1987). The Kraft campaign at issue consisted of several allegedly deceptive TV and print ads. The experimental design employed in the FTC's research was similar for both the broadcast and print communications. For the broadcast communications, separate groups of Experimental subjects were exposed to two of the allegedly deceptive TV commercials, and the results from these groups were compared to those obtained from a Control group exposed to another Kraft commercial that said nothing about milk or calcium and was therefore not in dispute. Similarly, for the print ads, the results for a group of Experimental subjects exposed to an allegedly deceptive print ad were compared with those obtained from a group of Control subjects exposed to another Kraft print ad not in dispute. There were 100 respondents in each of the three Experimental and two Control groups. Though exposed to different communications, all 500 subjects underwent the same protocol and answered the same questions. The sequence of activities, which involved random assignment of subjects to Experimental and Control groups but in other ways is unlike any design described thus far. was as follows (see Figure 8).

First, the subjects in each group were shown their respective communication along with two other distractor communications. Second, an assessment of communication impact was then made by asking the subjects a series of 10 multipart questions, including the following:

"Q.3 Do you remember seeing an ad for Kraft Singles?

Q.4 What points does the Kraft ad make about the product? (PROBE:) What else?

Q.4a Is there anything else about the Kraft ad that stands out in your mind? (PROBE:) Is there something else?

- Q.5a Does the ad give you any reasons why you should buy Kraft Singles?
- Q.6 Does the ad say or suggest anything about the nutritional value of Kraft Singles, or about how healthy or good they are for you?
- Q.8 Does the ad say or suggest anything about the milk content of Kraft Singles?
- Q.9 (If yes to Q 8:) You said the ad mentioned the milk content of Kraft Singles. What does the milk content of Kraft Singles mean to you?
- Q.10 Does the ad say or suggest anything about the calcium in Kraft Singles?"

Thus, either because they mentioned the word "calcium" themselves or because they were asked a series of ever more detailed questions that culminated in a question about "calcium," the testing protocol guaranteed that, by the end of Time 2, all 500 respondents — including the 200 respondents in the two Control groups that had been exposed to communications saying nothing about either milk or calcium — now had the notion of calcium in mind.

After the "priming" created by asking these questions, the third phase of the protocol (Time 3) involved returning to each such "primed" subject their respective Kraft communication and instructing them to review this communication "one more time." Immediately afterward, phase four (Time 4) involved asking these subjects another series of questions that included the following:

- "Q.11 Does this ad say or suggest anything about the amount of calcium in a slice of Kraft Singles compared to the amount of calcium in five ounces of milk?
- Q.12 Does this ad compare Kraft Singles to imitation cheese slices?
- Q.13 Does this ad make any direct comparisons between Kraft Singles and other cheese slices?
- Q.14 Based on this ad, do you think Kraft Singles have more calcium, the same amount of calcium, or less calcium than those cheese slices they are being compared to?"

Aside from the many flaws inherent in these questions (many of which are detailed in Jacoby and Szybillo, in preparation), the resultant data make it obvious that it was the testing procedure, not the allegedly deceptive nature of the ads, that was the most likely explanation for the findings of likely deception. Let me explain.

As a result of the various skip patterns associated with the questions, 91 of the 200 Control subjects and 246 of the 300 Experimental subjects were actually asked Question 14. As it should, the stem of this question clearly limited the respondents' focus by saying "Based on this ad...." Thus, all the Control subjects who got this far should have replied, "The ad I was shown doesn't say anything about calcium." Despite this fact, 63% (57 of the 91) replied that the ad said "Kraft Singles have more calcium." If one compares this 63% to the 74% (181 of the 246) Experimental subjects who replied that the ad said "Kraft Singles have more calcium," then it becomes glaringly obvious — although not to those at the FTC — that is was something about the testing procedure and/or questions, rather than exposure to the allegedly deceptive ads, that created the findings of likely deception.

In other words, simply including Control groups does not insure meaningful findings. Indeed, they may serve no other function than that of pseudoscientific legerdemain — the stuff of smoke screens and mirrors rather than honest inquiry.

Concluding Comments on Control Groups

Though there are special instances where testing causal questions may not require the use of Control groups, their use is generally called for. When such is the case, considerable thought needs to go into designing appropriate controls. Key questions include "How many?," "What type?" and "How structured?"

Since developing the definition of deceptive prescription drug advertising under contract for the FDA (wherein I proposed the use of "expurgated controls"3), control groups have generally been a feature of the designs I've developed and used to test for "likely deception" in regard to advertising and "likely confusion" in regard to trademarks and trade

dress. In writings prepared with, litigators and triers-of-fact in mind, others and I have tried to emphasize the critical importance of experimental design and use of Control groups for assessing the causal question being posed (e.g., Jacoby 1985B, especially pages 194-195; Diamond, 1989). Not surprisingly, however, many fail to use such designs; even when they are used, the written opinions overlook this fact, apparently not recognizing that such designs are absolutely necessary and qualitatively different from traditional survey designs. In as much as the presence and nature of controls can dramatically affect the value of a study, rendering it nearly worthless in one case and impervious to selected criticisms in others, several concluding thoughts regarding Control group design warrant mention.

Over the years, I've come to recognize the limited applicability of the "expurgated control" that I recommended to the FDA — the same kind of control that I heard being proposed by several who spoke from this podium yesterday. Such a control involves using the allegedly deceptive advertisement for both the Experimental and Control conditions, with the allegedly deceptive component purged from the Control version. While an expurgated control may be effective in those instances where just a single word or concept is at issue, it becomes problematic when more than one word or concept is involved.

For example, since the FTC alleged that approximately 30% of the verbal content of the Kraft communications was in some way responsible for creating the deception, simply removing the word "calcium" from these ads would have not been sufficient. To illustrate, suppose that this 30% of the verbiage contained three distinct message components — here labeled A, B, and C — and it was unclear just which one, or combination, of these components was responsible for the deceptiveness. Definitively addressing the causality question would require eight separate test groups, each exposed to a different combination of these message components - one group exposed to A, B, and C, another to A and B, but not C, a third to A and C but not B, and so on, until the eighth group was exposed to a version that contained none of the potentially misleading components. Just how many advertisers would be

willing and able to fund such research? More importantly, are there reasonable alternatives? (The answer may be "yes," but that's another paper.)

It should also be obvious that simply including one or more Control groups is no guarantee that you will end up with a valid or meaningful study. The study commissioned by the FTC in the Kraft matter illustrates this point. Both the procedures used and questions asked were severely biased in a number of ways. The net effect was that they produced a seemingly high level of apparent deceptiveness for the Experimental group. Yet when the problems and artifactual nature of these findings were pointed out to the Administrative Law Judge, the subtleties and complexities apparently were beyond his grasp. This is understandable and perhaps even excusable for one not versed in the rudiments of experimental design; it is much less so for the researcher(s) who designed the study.

Experimental design is a complex arena, and time does not permit a more detailed excursion. Unfortunately, even a few more hours would not be sufficient, as the subject encompasses many subtopics, of which many are subtle topics. Hopefully, the present bare-bones introduction has been sufficient for indicating that properly designed experimental studies are critically important when attempting to make causal assessments.

The interpretation of the data derived from experimentation can be equally as challenging. Consider the following tale. There once was a man who drank gin and water at home and became intoxicated. A few days later he decided to try something different and had a bourbon and water at the local bar. Again he became intoxicated. Finally, a few days later he went to a friend's house early in the morning where he had vodka and water and became drunk for a third time. Since the only thing that was constant in all three situations was water, he concluded that water makes him drunk! The implication: the design and interpretation of experimental studies is sufficiently complicated not to be left to those inexperienced in these matters.

Note: Figures begin on next page.

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Figure 6:

Decien 6	Group 1 (Experiment	al) (R):	O 1	x	O2
Design 6	Group 2 (Control)	(R):	O1		O2
		Time:—			>
			1	2	3

Figure 7: Modified Design 5:

Group	Type		
1	Experimental (R):	X-d	0
2	Control 1 (R):		
3	Control 2 (R):	X-md	0
	Time:		>
		1	2

Where:

X-d = Exposure to the proposed disclaimer

X-md = Exposure to the "modified disclaimer"

R = Random assignment

Figure 8: The FTC's Design in FTC v. Kraft

Group	Type					
1	Experimental (R):	X-e	0	X-e	0	
2	Control (R):	X-c	0	X-c	0	
	Time:	1	2	3	>	

Where:

X-e = Exposure to an allegedly deceptive communication

X-c = Exposure to an allegedly nondeceptive communication

R = Random assigment

Notes

- 1. Portions of this paper have been taken from Jacoby, J. (in preparation), <u>The Essentials of Behavioral Science Research.</u>
- 2. The original formulation of this definition (see Jacoby, 1974) was as follows: "A misleading prescription drug advertisement is one which causes either through its verbal content, its design, structure and/or visual artwork, or the context in which it appears — at least n% of a representative group of practicing physicians to have a common impression or belief regarding the advertised drug which is incorrect or not justified." The report to the FDA described the "deeper meanings" of each of the definitional components, with much of these later appearing in the condensed report published as Jacoby and Small (1975). Later revised so that it would apply to advertising in general (see Jacoby, Hoyer and Sheluga, 1980, pages 40-42), the most recent and comprehensive statement of the definition is provided and explained in Jacoby and Hoyer (1987, pages 54-62).
- 3. "Perhaps the most unique and central aspect of the FDA's intended approach lies in its reliance on commonly accepted research procedures for assessing cause-effect relationships. Experimental paradigms will be employed which will involve the manipulation of specific independent variables (i.e., test ads), control of selected other variables, and random assignment of subjects to treatment conditions. Mostly basically, subjects will be randomly assigned to one of at least two treatments: exposure to a purportedly misleading ad or exposure to the same ad presented in purportedly nonmisleading form. Any given respondent will be exposed to either the allegedly misleading version or the allegedly nonmisleading version, but not to both. Such 'between-subject' designs have the effect of eliminating many sources of bias and confounding errors. In addition, the respondents will be segmented according to whether or not they report having had prior exposure to the test ad or drug being advertised therein. Thus, the core of the experimental design may be depicted as a 2 x 2 contingency table." (Jacoby, 1974.)

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UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

DOCKET NO. 9208

In the Matter of KRAFT, INC., a corporation.

INITIAL DECISION

Lewis F. Parker Administrative Law Judge

DATED: April 3, 1989

PLAINTIFF

was not identical to the target market for the challenged ads, 78.2% of the survey's respondents reported having seen a Singles ad during the previous year (RX 82Z-135). Because respondents were required to have actually purchased Singles, the survey focused on those people for whom the difference between Singles' actual calcium content and the calcium in five ounces of milk would be meaningful in terms of purchase or usage behavior (Tr. 3658-59, 3468-70).

- 198. The consumers who participated in the survey were contacted through the use of a random digit telephone dialing procedure. Those who satisfied all of the criteria of the universe became part of the survey sample and were asked the questions on the main questionnaire; those who did not meet the screening criteria were terminated (RX 82I). The main questionnaire was administered to 200 people. As a result of validation procedures conducted after the interviews, seven people were removed from the sample. Consequently, the results of the survey were based on a sample of 193 people (RX 82M, 0).
- 199. In response to question 1a -- "people buy cheese for a number of different reasons. What are the reasons that you buy cheese? . . . (Probe:) Why else?" -- only 4.7% of the respondents mentioned calcium (RX 82Q, Z-64, Z-90). In response to question 1b -- "What are the reasons for your buying individually wrapped cheese food slices?" -- not a single respondent mentioned calcium (RX 82R, Z-64, Z-102). In response to question 1c -- "Now, I'd like you to think only about Kraft Singles cheese food slices. Please tell me all the reasons that you can think of as to why you buy Kraft Singles individually wrapped cheese food slices? Any other reasons?" -- only 1.6% of the respondents mentioned calcium (RX 82T, Z-64, Z-112).
- 200. In response to question 2, which asked "if Kraft Singles do contain, do not contain, or you don't know if they contain" calcium and six other nutrients, 24 respondents (12.4%) indicated that they did not know if Kraft Singles contain calcium and one respondent (0.5%) indicated that Singles do not contain calcium (RX 82Z-64, Z-117).
- 201. The 168 respondents to question 2 who said that Kraft Singles do contain calcium were then read a list of nine characteristics of cheese (inter alia, taste, price, consistent quality, a trustworthy manufacturer, calcium, Vitamin C) and asked whether each characteristic was "extremely important," "very important," "somewhat important," or "not at all important" in their decision to purchase Kraft Singles. For the 168 people who knew that Singles have calcium, calcium was rated near the bottom of the list in importance; only Vitamin C scored worse in both the "top box" and "top two box" analyses (RX 82V, W, Z-65, Z-127, Z-128; Tr. 3475). Although most of the

- respondents did say that calcium was important to them, they ranked virtually all of the other attributes more highly, thereby showing, according to Dr. Jacoby, that calcium is, in fact, relatively unimportant to their purchase of Singles (Tr. 3475). I reject his conclusion (F. 190).
- 202. Seventeen of the 192 respondents indicated that calcium was "not at all important" in their decision to purchase Singles (RX 82Z, Z-123). When the remaining 159 respondents were asked if they had "any idea as to how much calcium is contained in one slice of Kraft Singles," 151 (95%) replied that they had no idea (RX 82Z-65, Z-129).
- 203. Question 5a explicitly informed respondents that "although each slice of Kraft Singles is made from 5 ounces of whole milk, it does not contain as much calcium as 5 ounces of milk. One slice of Kraft Singles actually contains 70% of the calcium in 5 ounces of milk" (Tr. 3477, 3708; RX 82Z-66). Respondents were then asked whether the difference in the amount of calcium provided by Singles and the amount provided by five ounces of milk mattered to them. Specifically, they were asked whether they would "[c]ontinue buying Kraft Singles slices even though each slice contains 70% of the calcium in 5 ounces of milk" or would "stop buying Kraft Singles slices because each slice doesn't contain the same amount of calcium as 5 ounces of milk." To avoid order bias, these two response options were reversed on half of the questionnaire (RX 82Z-66; Tr. 3478).
- 204. The 17 respondents who had indicated that calcium was "not at all important" in their purchase of Singles and the one person who said that Singles did not contain calcium were not asked question 5a. Of the remaining 175 respondents, 168 (96.0%) replied that they would continue to buy Singles while three persons (1.7%) indicated that they would stop buying Singles, and four persons (2.3%) gave other answers (RX 82Z, Z-130; Tr. 3474, 3476, 3479).
- 205. The 172 respondents who indicated that they would not discontinue their purchase of Singles were then asked if that difference in the amount of calcium would affect their use of this product, and, if so, how it would affect the way they use it. Only three people (1.7%) indicated that the fact that Singles have 70%, not 100%, of the calcium in five ounces of milk would affect their use of the product (RX 82Z-1, Z-66, Z-131; Tr. 3480-81).
- 206. The results of the materiality survey are virtually identical for respondents with children and respondents without children (RX 82Z-130 through Z-131).

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m is conless tese ot.) ors int is of as ly d.". The pattern is clear. Virtually no consumer cites calcium as a reason for buying either the product (processed singles cheese slices) or brand (Kraft); when calcium is called to their attention by a closed-ended question, they claim it is important, though not as important as many other factors. Furthermore, almost none who claimed calcium was important knew how much calcium was in a slice of Kraft Singles. Answers to the key closed-ended questions (Q5a and 5b) are more compelling. After the Kraft survey told them "the truth" in Q5a—although each slice of Kraft Singles is made from five ounces of whole milk, it does not contain as much calcium as whole milk—only three (1.7%) of 193 respondents said it would affect their purchasing or usage behavior.

No study is perfect, Jacoby (1988) included. However, when compared and evaluated in terms such as universe definition, sampling, questions asked, and analyses, we find that whereas Jacoby (1988) generally employed recognized and accepted scientific practices, especially as applied in litigation surveys, Stewart's (1987) survey did not. In addition, except for relying on Kraft's finding that 71% of consumers agreed calcium was important, something Kraft did not dispute prior to the hearings, the ALJ relied on Stewart's (1987) survey and ignored the remainder of Kraft's findings.

Discussion

In reviewing FTC v. Kraft, Richards and Preston (1992, p. 51) write:

Jacoby's survey provided support for Kraft's position that this calcium content claim, if implied, was unlikely to affect consumers' choice of or conduct regarding the product. His study addressed not only purchase decisions, but also use of the product. In spite of this evidence, the FTC declared it "insufficiently probative to rebut the evidence in support of the milk equivalency cy claim."

After reviewing various ways to assess materiality (see p. 52), Richards and Preston (p. 54) conclude: "We would posit that the best test of materiality entails comparing the importance of the implied falsity to that of the truth, much as Jacoby did when he asked whether the difference in calcium would cause them to continue or stop buying Singles." Again, the issue is not is calcium material? but is the difference between 3.5 ounces (the truth) and five ounces (the alleged implied false claim) material? The remainder of our article addresses issues raised by Stewart (1995) and discusses the implications of FTC v. Kraft.

Replying to Stewart (1995)

Stewart posits that the outcome of the case rested on more than just the two surveys discussed above. However, because the alleged claims are not material, these other issues become moot, and there is no basis for deciding against Kraft. Regarding the two surveys, Stewart represents: "[T]hese data were considered probative and relied on by the ALJ and the FTC ... [and] the Federal Court of Appeals in arriving at their various decisions" (emphasis added). Not so. Although relied on by the ALJ, these data were not relied on by either the Commission or the Federal Court of Appeals. As the Court of Appeals noted: "The Commission based all [its] findings on its own impression and found it unnecessary to resort to extrinsic evidence; ..." (Kraft v.

FTC, 1992, pp. 315–16). The Commission simply noted the data were "consistent" with its own interpretation. As to its own review, the Court of Appeals (p. 321) wrote: "Because we conclude that the Commission was not required to rely on extrinsic evidence, we need not examine the extrinsic evidence proffered by Kraft [or by the FTC Staff]" (Kraft v. FTC, 1992, p. 321).

Stewart notes that his (1987) protocol and question format comply with common industry practice, whereas Jacoby's (1988) do not. For example, Jacoby's "criticism of re-exposure is curious given the frequency with which similar approaches are employed in copy testing research;" and "the question format used by Jacoby is infrequently used in copy testing research." Such statements do not heed the fact that relevant court decisions have caused litigation surveys to evolve in many ways that differ from standard copy testing and marketing research (Jacoby, Handlin, and Simonson 1994). Whereas standard marketing/copy testing research often uses questions that lead by posing only the affirmative. litigation surveys may not; whereas standard research may use forced choice questions that do not permit a "don't know" type of answer, litigation surveys may not; and whereas standard copy testing research may use repeated exposure designs, litigation surveys are criticized for doing so. In light of these litigation research standards, it is surprising that the FTC authorized the Stewart (1987) methodology when it had so frequently inveighed against the very same procedures and question formats in other cases.

Stewart notes that, at trial, "...Jacoby ... agreed that consumers would prefer a slice of cheese with 100% of the calcium in five ounces of milk over one with only 70%." From this, he incorrectly implies that Jacoby must consider the calcium difference material and opines that had Jacoby asked respondents "would you prefer a cheese slice that has more or less calcium, or don't you know?" materiality would become obvious. Stewart confuses preferences with beliefs, purchase, and usage. Since Wilkie's (1974) study. the FTC has known and accepted that beliefs, not preferences or evaluations, are the mental state of interest. Like many consumers, although we might prefer a slice of Singles with 100% of the calcium over one with 70%, the fact that a slice has only 70% would not affect our purchase behavior, nor would it cause us to place two slices in our sandwiches and omelets to make up for the 4% difference in

Writing that, "regardless of other criticism that may be raised regarding the two studies, their consistency, or inconsistency, with other evidence must be given great weight," Stewart claims his survey "confirms and is consistent with a large body of other evidence," and that the "conclusions based on the Kraft survey directly contradict a substantial amount of other data." Not so. Just what "large body of evidence" shows that the advertisements were deceptive? No such research can be cited because, other than Stewart (1987), none exists. What "substantial amount of other data" is there to show that the 4% difference in calcium USRDA per slice is material to consumers of processed American cheese slices? Again, no such research can be cited because none exists; thus, there is nothing with which Jacoby (1988) is "inconsistent."

[Federal Register: May 23, 1997 (Volume 62, Number 100)]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration [Docket No. 97N-0201]

Agency Information Collection Activities: Proposed Collection;

AGENCY: Food and Drug Administration, HHs.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency pursuant to the Paperwork Reduction Act of 1995 (the PRA). This notice solicits comments on a data collection effort consisting of four consumer surveys regarding preferences for, and comprehension of information contained in different formats and methods for communication in over-the-counter (OTC) drug labels. For two of these studies (studies A and B), the agency has requested emergency processing of the proposed collection by the Office of Management and Budget (OMB).

DATES: Submit written comments on the collection of information for studies A and B by June 2, 1997. Submit written comments on the collection of information for studies C and D by July 22, 1997.

ADDRESSES: Submit written comments on the collection of information for studies A and B to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. Submit written comments on the collection of information for studies C and D to the Dockets Management Branch (HFA-305), ATTN: OTC Drug Labeling Data Collection, Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B-19, Rockville, MD 20857, 301-827-1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. 'Collection of information' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information before submitting the collections to OMB for approval. Section 3507(j) of the P.A. and 5 CFR 1320.12 provides for emergency processing of proposed collection of

- 14. How often have you purchased an over-the-counter sunscreen in the past six months? Would you say: b. One or two times c. Three or four times d. Five or six times e. Seven or more times
- 15. Are you being treated for any of the following medical conditions? List all that apply [show
 - b. High blood pressure
 - c. Asthma
 - d. Depression
 - e. High cholesterol
 - f. Stomach ulcers
 - g. Emphysema
- 16. Which one of these letter groups includes your total annual family income? [show card]
 - c. \$30,000 \$34,999
 - d. \$35,000 \$39,999
 - e. \$40,000 \$49,999
 - f. \$50,000 \$59,999

 - g. \$60,000 \$74,999
 - h. \$75,000 and over
- 17. Which one of these letter groups represents your ethnic group? [show card]

 - c. Asian
 - d. Caucasian
 - e. Native American
 - f. Other

Thank respondent for participating.



To:

Ivan Ross

Ross Research

From:

Jim Robinson

Robinson & Muenster Associates, Inc.

Date:

3/11/96

Re:

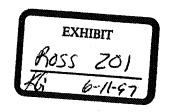
Native American Sample

Attached with this memo are three lists. This first is a listing of the top 50 counties in the country (excluding Alaska & Hawaii) ranked by the percentage of Native American population of the country population. These counties fall into 13 different states. At the bottom of the list are the six Alaskan districts that would have been in the top 50.

The other two pages are a list of the top 50 and second 50 census tracts ranked by the percentage of Native American population of the tract population. The top 50 count 12 states or one less than doing it by top 50 counties. Going to the top 100 tracts you only add one state so nothing is gained state wise. I also marked the 13 tracts in the top 50 that are part of the top 50 counties. This is 13 tracts in 6 of the counties.

I suspect it will be difficult to get phone exchanges equal to the census tracts (note the one in Erie, NY with only ten persons). Looking at the top 50 counties, the Native American population is 420,856 of the 50 county total of 1,103,159. This represents an overall incidence of 38.15%. I realize that actual phone incidence will be much lower but at least this is a starting point.

I would recommend we draw an RDD sample of these 50 counties for the survey. Please take a look at all this and tell me what you think. Thanks!



1208 Elkhorn Street

Sioux Falis, South Dakota 57104-0218

(605) 332-3386

Fax (605) 332-8722

P.03

County, State	Pop.	Ametudo	. %	Am. Ins
Shannon, SD	9902	9372 94	.65%	of county
Menominee, Wi	3890		.15%	•
Todd, SD	8352		.39%	
Apache, AZ	61591		.60%	
Buffalo, SD	1759		.60%	
Sioux, ND	3761		.35%	
McKinley, NM	60686		.77%	Top 50 Coenties
*. ·	5523		.63%	100 30
Dewey, SD	12772		.49%	
Rolette, ND	2220		.96%	Contraction
Ziebach, SD	12121		.29%	
Glacier, MT	11337		.46%	•
Big Horn, MT San Juan, UT	12621		.34%	/ - 5
Navajo, AZ	77658		.04%	6x pop, 2
Roosevelt, MT	10999		,69%	9 10 6
	4195		.44%	
Corson, SD	2137		.75%	
Mellette, SD	3206		.19%	[3 States
Bennett, SD	18421		.78%	
Adair, OK			.40%	13 54,4e5
Jackson, SD	2811			
Blaine, MT	6728).51%).51%	
Robeson, NC	105179			
Benson, ND	7198		3.50%	
Cibola, NM	23794		3.44%	
San Juan, NM	91605		.71%	
Cherokee, OK	34049		39%	
Coconino, AZ	96591		.21%	
Lyman, SD	3638		3.89%	
Swain, NC	11268		.29%	
Rosebud, MT	10505		.71%	
Delaware, OK	28070		.28%	
Alpine, CA	1113		.25%	
Mahnomen, MN	5044		1.65%	
Roberts, SD	9914		1.00%	
Caddo, OK	29550		2.56%	
Charles Mix, SD	9131	1992 21		
Lake, MT	21041		.29%	•
Sequoyah, OK	33828		.69%	•
Okfuskee, OK	11551	,).20%	
Mountrail, ND	7021		.87%	
Sandoval, NM	63319		1.72%	
Jefferson, OR	13876		.46%	
Craig, OK	14104		.09%	
McIntosh, OK	16779		3.31%	
Ottawa, OK	30561	5557 18		•
Mayes, OK	33366		3.03%	
Ferry, WA	6295		7.90%	
La Paz, AZ	13844		7,34%	
Hughes, OK	13023		7.12%	Ton C.
Seminole, OK	25412		.93%	
Yukon-Koyukuk, AK	8478	4432 52		Hagke-would have been Top So
Prince of Wales-Outer Ketchikan, AK	6278		3.73%	A-lack !
Skagway-YakutatAngoon, AK	4385		3.44%	> " (arma - would
Sitka, AK	8588		3.49%	
Wrangell-Petersburg, AK	7042		3.06%	/ have Been Tant.
Lake and Peninsula, AK	1668	293 17	7.57%	or do see

TO

			8	A .	6 V	Census Tract
			.1			
COUNTY, STATE				% AM. IND		
Ene, NY	014804	10	10		-11	#1 = Tracts that
Coconino, AZ	0024	6183	8125			= Iracis ince
Coconino, AZ	0022	6718	.6647	98.94%		~ .
Coconino, AZ	0025	924	912		4 /	are in Top so
Gila, AZ	9860	1262	1236			Ca where Bruk
Pima, AZ	0048	7785	7573			Counties (13 in 6 counties)
Pinel, AZ	0018	736	715			Countres
Pinal, AZ	0001	6772	6504	96.04%		
Gila, AZ	9850	3616	3472			•
Bernalillo, NM	0039	2171	2070			•
Beltrami, MN	9508	3752	3568	95.10%	201	12 states
Jefferson, OR	9604	2400	2274	94.75%	-yK (123 12/13
Maricopa, AZ	62 32	2777	2612			
Erie, NY	0162	1789	1672			•
Pima, AZ	0042	1172	1073	91.55%		•
Rio Arribe, NM	9537	2587	2366	91.46%		
Coconino, AZ	0023	7171	8497	90.60%	~ ⊭(
Bemalillo, NM	0048	1201	1070	89.09%		
Sandoval, NM	0103	6323	5444	86.10%		
Maricopa, AZ	0202	5454	4088	74.95%		
Sandoval, NM	0102	4846	2870	59.22%		
Sandoval, NM	0101	4129	2417	58.54%	. 1	
Delaware, OK	9761	3974	2108	53.04%	# {	
Whatcom, WA	0108	3147	1583	50.30%		
Sawyer, WI	9805	2076	1003	48.31%		
Hennepin, MN	0073	2359	1118	47.39%		
Humboldt, CA	0101	4885	2312	47.33%		•
Uintah, UT	988598	4584	1986	43.32%		
Hoke, NC	9704	4898	1941	39.63%		•
Marioopa, AZ	320002	5458	2139	39.19%		
Caddo, OK	9621	7173	2 556	35.63%	-/ (•
Mayes, OK	0406	3432	1160	33.80% —	* /	
Multnomah, OR	010798	8	3	33.33%		
Delaware, OK	9760	4244	1409	33.20%	火(
Bekrami, MN	9509	1361	449	32.99%		
Yakima, WA	0024	4027	1327	32.95%	1. 45	
Caddo, OK	9622	2969	940	31.06%-	* 1	
Sawyer, Wi	9804	1415	437	30.88%		
Le Flore, OK	. 0407	3416	1049	30.71%		
Rio Arriba, NM	9538	339	103	30.38%		
Sequoyah, OK	030101	3833	1157	30.19%	* (
Hennepin, MN	0079	2119	636	30.01% ₩ ₡		
Pima, AZ	004308	7981	2362	29.60%		e e
Hennepin, MN	0 072	3120	900	28.85%		
Hennepin, MN	0081	1442	410	28.43%		
Delaware, OK	9759	3156	886	28.07%		
Mayes, OK	0405	6435	1703	26.48%7	KI	
Pennington, SD	0101	359	95	26.46%		
Osage, OK	0106	5310	1387	26.12%		Top so Tracks
San Diego, CA	019101	4535	1162	25.62%		
Chippewa, MI	9702	3889	988	25.54%		
Pottawatomie, OK	5002	1891	477	25.22%		
Caddo, OK	9618	9907	980	25.08%		
Yakima, WA	0027	6585	1640	24.91%		
Sequoyah, OK	030202	4893	1202	24.57%		
= =			•			

Page 1

14-bi 1884	0000	C000	1431	24.56%				
Yakima, WA	0026 9541	5828 5209	1274	24.48%				
Rio Amba, NM Caddo, OK	9620	4094	998	24.38%				
Ottawa, OK	9742	3295	777	23.58%				
Chippewa, MI	9708	3281	765	23.32%				
Coconino, AZ	0021	6598	1533	23.23%				
Caddo, GK	9619	1847	429	23.23%				
Oklahoma, OK	103802	229	52	22.71%				
Sequoyah, OK	030201	2304	518	22.48%				
Muskogee, OK	0015	6599	1477	22.38%				
Marion, OR	011098	9	2	22.22%	•			
Sandoval, NM	010502	3580	788	22.01%				
Delaware, OK	9762	4207	921	21.89%		-		•
Rogers, OK	050101	2641	550	20.83%				
Seguoyah, OK	0303	7588	1589	20.74%				
Ottawa, OK	9741	5484	1097	20.00%				
Ottawa, OK	9749	2500	497	19.88%				
Coconino, AZ	0019	3811	755	19.81%				
Yakima, WA	0025	5360	1057	19.72%				
Mayes, OK	0407	3129	615	19.65%				
Pottawatomie, OK	500301	3478	681	19.58%				
San Bernardino, CA	0106	1472	286	19.43%				
Juneau, AK	- 9773	4180	807	19.22%	•			
Osage, OK	010201	5785	1108	19.15%				
Osage, OK	0104	5865	1107	18.87%				
Pittsburg, OK	9887	5133	968	18.86%				
Muskogee, OK	0014	6704	1261	18.81%				
Tuisa, OK	0026	873	164	18.7 9%				
Pennington, &D	0103	6407	1193	18.62%				
Ottawa, OK	9747	3927	727	18.51%				
Pottawatomie, OK	500302	2721	502	18.45%				
Sequoyah, OK	030401	2703	492	18.20%				
Coconino, AZ	0003	5837	1062	18.19%				
Ottawa, OK	9745	2316	420	18.13%				
Rogers, OK	0507	3813	688	18.04%				
Pittsburg, OK	9868	2206	392	17.77%				
Klameth, OR	9702	3784	688	17.65%				
St. Louis, MN	0155	2940	517	17.59%				
Delaware, OK	9756	3940	685	17.39%				
Comanche, OK	0023	7114	1223	17.19%				•
Pennington, SD	0104	5080	873	17.19%				
Sequoyah, OK	030102	7058	1201	17.02%				
Ottawa, OK Pittsburg, OK	9744 9857	2635 2294	446 388	16.93%				
				16.91%		•		
Snohomish, WA	053098	7103 4392	1193	16.80% 16.58%			200	
Ottswa, OK	9743	2385	728 392_	16.36%		ZNS	50	tracts
Osage, OK	0103	2983	489	16.39%				
Comanche, OK	0022	4512	720	15.96%				
Muskogee, OK	0013	5468	872	15.95%				
Pottawatomie, OK	500998	5124	811	15.83%				
Rogers, OK	0502	5933	937	15.79%				•
Muskogee, OK	0009	5163	815	15.79%				
Fairbanks North Star, AK	0003	4165	657	15.77%				
Pennington, SD	0114	7270	1144	15.74%				
Mayes, OK	0401	4211	661	15.70%				
			.				,	

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TOTAL P.05